

SENATE BILL No. 437

July 1, 2015, Introduced by Senator NOFS and referred to the Committee on Energy and Technology.

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

by amending the title and sections 6a, 6j, 6s, 10, 10a, 10f, 10p, 10r, and 10t (MCL 460.6a, 460.6j, 460.6s, 460.10, 460.10a, 460.10f,

460.10p, 460.10r, and 460.10t), the title as amended by 2005 PA 190, sections 6a, 10, 10a, 10p, and 10r as amended and section 6s as added by 2008 PA 286, section 6j as amended by 1987 PA 81, and sections 10f and 10t as added by 2000 PA 141, and by adding section 6t; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to provide for the regulation and control of public and certain private utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; ~~to provide for a restructuring of the manner in which energy is provided in this state;~~ to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies

1 and penalties; and to repeal acts and parts of acts.

2 Sec. 6a. (1) A gas or electric utility shall not increase its
3 rates and charges or alter, change, or amend any rate or rate
4 schedules, the effect of which will be to increase the cost of
5 services to its customers, without first receiving commission
6 approval as provided in this section. The utility shall place in
7 evidence facts relied upon to support the utility's petition or
8 application to increase its rates and charges, or to alter, change,
9 or amend any rate or rate schedules. The commission shall require
10 notice to be given to all interested parties within the service
11 area to be affected, and all interested parties shall have a
12 reasonable opportunity for a full and complete hearing. A utility
13 may use projected costs and revenues for a future consecutive 12-
14 month period in developing its requested rates and charges. The
15 commission shall notify the utility within 30 days of filing,
16 whether the utility's petition or application is complete. A
17 petition or application is considered complete if it complies with
18 the rate application filing forms and instructions adopted under
19 subsection (6). A petition or application pending before the
20 commission ~~prior to~~ **BEFORE** the adoption of filing forms and
21 instructions ~~pursuant to~~ **UNDER** subsection (6) shall be evaluated
22 based upon the filing requirements in effect at the time the
23 petition or application was filed. If the application is not
24 complete, the commission shall notify the utility of all
25 information necessary to make that filing complete. If the
26 commission has not notified the utility within 30 days of whether
27 the utility's petition or application is complete, the application

1 is considered complete. If the commission has not issued an order
2 within 180 days of the filing of a complete application, the
3 utility may implement up to the amount of the proposed annual rate
4 request through equal percentage increases or decreases applied to
5 all base rates. For a petition or application pending before the
6 commission prior to the effective date of the amendatory act that
7 added this sentence, the 180 day period commences on the effective
8 date of the amendatory act that added this sentence. If the utility
9 uses projected costs and revenues for a future period in developing
10 its requested rates and charges, the utility may not implement the
11 equal percentage increases or decreases prior to the calendar date
12 corresponding to the start of the projected 12 month period. For
13 good cause, the commission may issue a temporary order preventing
14 or delaying a utility from implementing its proposed rates or
15 charges. If a utility implements increased rates or charges under
16 this subsection before the commission issues a final order, that
17 utility shall refund to customers, with interest, any portion of
18 the total revenues collected through application of the equal
19 percentage increase that exceed the total that would have been
20 produced by the rates or charges subsequently ordered by the
21 commission in its final order. The commission shall allocate any
22 refund required by this section among primary customers based upon
23 their pro rata share of the total revenue collected through the
24 applicable increase, and among secondary and residential customers
25 in a manner to be determined by the commission. The rate of
26 interest for refunds shall equal 5% plus the London interbank
27 offered rate (LIBOR) for the appropriate time period. For any

1 ~~portion of the refund which, exclusive of interest, exceeds 25% of~~
2 ~~the annual revenue increase awarded by the commission in its final~~
3 ~~order, the rate of interest shall be the authorized rate of return~~
4 ~~on the common stock of the utility during the appropriate period.~~
5 ~~Any refund or interest awarded under this subsection shall not be~~
6 ~~included, in whole or in part, in any application for a rate~~
7 ~~increase by a utility. Nothing in this **THIS** section impairs **DOES**~~
8 **NOT IMPAIR** the commission's ability to issue a show cause order as
9 part of its rate-making authority. An alteration or amendment in
10 rates or rate schedules applied for by a public utility that will
11 not result in an increase in the cost of service to its customers
12 may be authorized and approved without notice or hearing. There
13 shall be no increase in rates based upon changes in cost of fuel or
14 purchased gas unless notice has been given within the service area
15 to be affected, and there has been an opportunity for a full and
16 complete hearing on the cost of fuel or purchased gas. The rates
17 charged by any utility pursuant to an automatic fuel or purchased
18 gas adjustment clause shall not be altered, changed, or amended
19 unless notice has been given within the service area to be
20 affected, and there has been an opportunity for a full and complete
21 hearing on the cost of the fuel or purchased gas.

22 (2) The commission shall adopt rules and procedures for the
23 filing, investigation, and hearing of petitions or applications to
24 increase or decrease utility rates and charges as the commission
25 finds necessary or appropriate to enable it to reach a final
26 decision with respect to petitions or applications within a period
27 of ~~12~~10 months from the filing of the complete petitions or

1 applications. The commission shall not authorize or approve
2 adjustment clauses that operate without notice and an opportunity
3 for a full and complete hearing, and all such clauses ~~shall be~~ **ARE**
4 abolished. The commission may hold a full and complete hearing to
5 determine the cost of fuel, purchased gas, or purchased power
6 separately from a full and complete hearing on a general rate case
7 and may be held concurrently with the general rate case. The
8 commission shall authorize a utility to recover the cost of fuel,
9 purchased gas, or purchased power only to the extent that the
10 purchases are reasonable and prudent. ~~As used in this section:~~

11 ~~—— (a) "Full and complete hearing" means a hearing that provides~~
12 ~~interested parties a reasonable opportunity to present and cross-~~
13 ~~examine evidence and present arguments relevant to the specific~~
14 ~~element or elements of the request that are the subject of the~~
15 ~~hearing.~~

16 ~~—— (b) "General rate case" means a proceeding initiated by a~~
17 ~~utility in an application filed with the commission that alleges a~~
18 ~~revenue deficiency and requests an increase in the schedule of~~
19 ~~rates or charges based on the utility's total cost of providing~~
20 ~~service.~~

21 (3) Except as otherwise provided in this subsection, if the
22 commission fails to reach a final decision with respect to a
23 completed petition or application to increase or decrease utility
24 rates within the ~~12-month~~ **10-MONTH** period following the filing of
25 the completed petition or application, the petition or application
26 is considered approved. If a utility makes any significant
27 amendment to its filing, the commission has an additional 12 months

1 from the date of the amendment to reach a final decision on the
2 petition or application. If the utility files for an extension of
3 time, the commission shall extend the 12-month period by the amount
4 of additional time requested by the utility.

5 (4) A utility shall not file a general rate case application
6 for an increase in rates earlier than 12 months after the date of
7 the filing of a complete prior general rate case application. A
8 utility may not file a new general rate case application until the
9 commission has issued a final order on a prior general rate case or
10 until the rates are approved under subsection (3).

11 (5) The commission shall, if requested by a gas utility,
12 establish load retention transportation rate schedules or approve
13 gas transportation contracts as required for the purpose of
14 retaining industrial or commercial customers whose individual
15 annual transportation volumes exceed 500,000 decatherms on the gas
16 utility's system. The commission shall approve these rate schedules
17 or approve transportation contracts entered into by the utility in
18 good faith if the industrial or commercial customer has the
19 installed capability to use an alternative fuel or otherwise has a
20 viable alternative to receiving natural gas transportation service
21 from the utility, the customer can obtain the alternative fuel or
22 gas transportation from an alternative source at a price ~~which~~ **THAT**
23 would cause them to cease using the gas utility's system, and the
24 customer, as a result of their use of the system and receipt of
25 transportation service, makes a significant contribution to the
26 utility's fixed costs. The commission shall adopt accounting and
27 rate-making policies to ensure that the discounts associated with

1 the transportation rate schedules and contracts are recovered by
2 the gas utility through charges applicable to other customers if
3 the incremental costs related to the discounts are no greater than
4 the costs that would be passed on to those customers as the result
5 of a loss of the industrial or commercial customer's contribution
6 to a utility's fixed costs.

7 ~~(6) Within 90 days of the effective date of the amendatory act~~
8 ~~that added this subsection, the~~ **THE** commission shall adopt standard
9 rate application filing forms and instructions for use in all
10 general rate cases filed by utilities whose rates are regulated by
11 the commission. For cooperative electric utilities whose rates are
12 regulated by the commission, in addition to rate applications filed
13 under this section, the commission shall continue to allow for rate
14 filings based on the cooperative's times interest earned ratio. The
15 commission may ~~, in its discretion,~~ modify the standard rate
16 application forms and instructions adopted under this subsection.

17 (7) If, on or before January 1, 2008, a merchant plant entered
18 into a contract with an initial term of 20 years or more to sell
19 electricity to an electric utility whose rates are regulated by the
20 commission with 1,000,000 or more retail customers in this state
21 and if, ~~prior to~~ **BEFORE** January 1, 2008, the merchant plant
22 generated electricity under that contract, in whole or in part,
23 from wood or solid wood wastes, then the merchant plant shall, upon
24 petition by the merchant plant, and subject to the limitation set
25 forth in subsection (8), recover the amount, if any, by which the
26 merchant plant's reasonably and prudently incurred actual fuel and
27 variable operation and maintenance costs exceed the amount that the

1 merchant plant is paid under the contract for those costs. This
2 subsection does not apply to landfill gas plants, hydro plants,
3 municipal solid waste plants, or to merchant plants engaged in
4 litigation against an electric utility seeking higher payments for
5 power delivered pursuant to contract.

6 (8) The total aggregate additional amounts recoverable by
7 merchant plants ~~pursuant to~~ **UNDER** subsection (7) in excess of the
8 amounts paid under the contracts shall not exceed \$1,000,000.00 per
9 month for each affected electric utility. The \$1,000,000.00 per
10 month limit specified in this subsection shall be reviewed by the
11 commission upon petition of the merchant plant filed no more than
12 once per year and may be adjusted if the commission finds that the
13 eligible merchant plants reasonably and prudently incurred actual
14 fuel and variable operation and maintenance costs exceed the amount
15 that those merchant plants are paid under the contract by more than
16 \$1,000,000.00 per month. The annual amount of the adjustments shall
17 not exceed a rate equal to the United States consumer price index.
18 An adjustment shall not be made by the commission unless each
19 affected merchant plant files a petition with the commission. ~~As~~
20 ~~used in this subsection, "United States consumer price index" means~~
21 ~~the United States consumer price index for all urban consumers as~~
22 ~~defined and reported by the United States department of labor,~~
23 ~~bureau of labor statistics.~~ If the total aggregate amount by which
24 the eligible merchant plants reasonably and prudently incurred
25 actual fuel and variable operation and maintenance costs determined
26 by the commission exceed the amount that the merchant plants are
27 paid under the contract by more than \$1,000,000.00 per month, the

1 commission shall allocate the additional \$1,000,000.00 per month
2 payment among the eligible merchant plants based upon the
3 relationship of excess costs among the eligible merchant plants.
4 The \$1,000,000.00 limit specified in this subsection, as adjusted,
5 shall not apply with respect to actual fuel and variable operation
6 and maintenance costs that are incurred due to changes in federal
7 or state environmental laws or regulations that are implemented
8 after ~~the effective date of the amendatory act that added this~~
9 ~~subsection.~~ **OCTOBER 6, 2008.** The \$1,000,000.00 per month payment
10 limit under this subsection ~~shall~~ **DOES** not apply to merchant plants
11 eligible under subsection (7) whose electricity is purchased by a
12 utility that is using wood or wood waste or fuels derived from
13 those materials for fuel in their power plants. **AS USED IN THIS**
14 **SUBSECTION, "UNITED STATES CONSUMER PRICE INDEX" MEANS THE UNITED**
15 **STATES CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND**
16 **REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR**
17 **STATISTICS.**

18 (9) The commission shall issue orders to permit the recovery
19 authorized under subsections (7) and (8) upon petition of the
20 merchant plant. The merchant plant shall not be required to alter
21 or amend the existing contract with the electric utility in order
22 to obtain the recovery under subsections (7) and (8). The
23 commission shall permit or require the electric utility whose rates
24 are regulated by the commission to recover from its ratepayers all
25 fuel and variable operation and maintenance costs that the electric
26 utility is required to pay to the merchant plant as reasonably and
27 prudently incurred costs.

1 (10) THE COMMISSION MAY APPROVE A REVENUE DECOUPLING MECHANISM
2 FOR A NATURAL GAS OR ELECTRIC UTILITY THAT ADJUSTS FOR INCREASES OR
3 DECREASES IN ACTUAL SALES VOLUMES COMPARED TO THE PROJECTED LEVELS
4 USED IN THE NATURAL GAS OR ELECTRIC UTILITIES' MOST RECENT RATE
5 CASE. IN DETERMINING THE REVENUE DECOUPLING MECHANISM FOR A
6 UTILITY, THE COMMISSION SHALL GIVE DEFERENCE TO THE PROPOSED
7 REVENUE DECOUPLING MECHANISM SUBMITTED BY THE UTILITY. THE
8 COMMISSION MAY APPROVE A REVENUE DECOUPLING MECHANISM THAT IS NOT
9 SUBMITTED BY A UTILITY IF THE COMMISSION DETERMINES THAT THE
10 REVENUE DECOUPLING MECHANISM IS REASONABLE AND PRUDENT.

11 (11) AS USED IN THIS SECTION:

12 (A) "FULL AND COMPLETE HEARING" MEANS A HEARING THAT PROVIDES
13 INTERESTED PARTIES A REASONABLE OPPORTUNITY TO PRESENT AND CROSS-
14 EXAMINE EVIDENCE AND PRESENT ARGUMENTS RELEVANT TO THE SPECIFIC
15 ELEMENT OR ELEMENTS OF THE REQUEST THAT ARE THE SUBJECT OF THE
16 HEARING.

17 (B) "GENERAL RATE CASE" MEANS A PROCEEDING INITIATED BY A
18 UTILITY IN AN APPLICATION FILED WITH THE COMMISSION THAT ALLEGES A
19 REVENUE DEFICIENCY AND REQUESTS AN INCREASE IN THE SCHEDULE OF
20 RATES OR CHARGES BASED ON THE UTILITY'S TOTAL COST OF PROVIDING
21 SERVICE.

22 Sec. 6j. (1) As used in this act:

23 (a) "Power supply cost recovery clause" means a clause in the
24 electric rates or rate schedule of ~~a~~**AN ELECTRIC** utility ~~which~~**THAT**
25 permits the monthly adjustment of rates for power supply to allow
26 the utility to recover the booked costs, including transportation
27 costs, reclamation costs, and disposal and reprocessing costs, of

1 fuel burned by the utility for electric generation and the booked
2 costs of purchased and net interchanged power transactions by the
3 utility incurred under reasonable and prudent policies and
4 practices.

5 (b) "Power supply cost recovery factor" means that element of
6 the rates to be charged for electric service to reflect power
7 supply costs incurred by an electric utility and made pursuant to a
8 power supply cost recovery clause incorporated in the rates or rate
9 schedule of an electric utility.

10 (2) ~~Pursuant to its authority under this act, the~~ **THE** public
11 service commission may incorporate a power supply cost recovery
12 clause in the electric rates or rate schedule of ~~a~~ **AN ELECTRIC**
13 utility. ~~, but is not required to do so.~~ Any order incorporating a
14 power supply cost recovery clause shall be as a result of a hearing
15 solely on the question of the inclusion of the clause in the rates
16 or rate schedule. ~~, which~~ **A hearing UNDER THIS SUBSECTION** shall be
17 conducted as a contested case pursuant to chapter 4 of the
18 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
19 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
20 ~~Compiled Laws, 1969 PA 306, MCL 24.271 TO 24.287,~~ or, pursuant to
21 subsection (18), as a result of a general rate case. Any order
22 incorporating a power supply cost recovery clause shall replace and
23 rescind any previous fuel cost adjustment clause or purchased and
24 net interchanged power adjustment clause incorporated in the
25 electric rates of the utility upon the effective date of the first
26 power supply cost recovery factor authorized for the utility under
27 its power supply cost recovery clause.

1 (3) In order to implement the power supply cost recovery
2 clause established ~~pursuant to~~ **UNDER** subsection (2), a **AN ELECTRIC**
3 utility annually shall file, pursuant to procedures established by
4 the commission, if any, a complete power supply cost recovery plan
5 describing the expected sources of electric power supply and
6 changes in the cost of power supply anticipated over a future 12-
7 month period specified by the commission and requesting for each of
8 those 12 months a specific power supply cost recovery factor. The
9 plan shall be filed not ~~less~~ **LATER** than 3 months before the
10 beginning of the 12-month period covered by the plan. The plan
11 shall describe all major contracts and power supply arrangements
12 entered into by the utility for providing power supply during the
13 specified 12-month period. The description of the major contracts
14 and arrangements shall include the price of fuel, the duration of
15 the contract or arrangement, and an explanation or description of
16 any other term or provision as required by the commission. The plan
17 shall also include the utility's evaluation of the reasonableness
18 and prudence of its decisions to provide power supply in the manner
19 described in the plan, in light of its existing sources of
20 electrical generation, and an explanation of the actions taken by
21 the utility to minimize the cost of fuel to the utility.

22 (4) In order to implement ~~the~~ **A** power supply cost recovery
23 clause established ~~pursuant to~~ **UNDER** subsection (2), a **AN ELECTRIC**
24 utility shall file, contemporaneously with the power supply cost
25 recovery plan required by subsection (3), a 5-year forecast of the
26 power supply requirements of its customers, its anticipated sources
27 of supply, and projections of power supply costs, in light of its

1 existing sources of electrical generation and sources of electrical
2 generation under construction. The forecast shall include ~~a~~**ALL OF**
3 **THE FOLLOWING:**

4 (A) A description of all relevant major contracts and power
5 supply arrangements entered into or contemplated by the utility. ~~7~~
6 ~~and such~~

7 (B) **A DEMONSTRATION THAT THE UTILITY HAS ADEQUATE RESOURCES TO**
8 **MEET ANY RESERVE MARGIN REQUIRED BY LAW.**

9 (C) **ANY** other information ~~as~~ the commission may require.

10 (5) If ~~a~~**AN ELECTRIC** utility files a power supply cost
11 recovery plan and a 5-year forecast as provided in subsections (3)
12 and (4), the commission shall conduct a proceeding, to be known as
13 a power supply and cost review, for the purpose of evaluating the
14 reasonableness and prudence of the power supply cost recovery plan
15 filed by a utility ~~pursuant to~~**UNDER** subsection (3), and
16 establishing the power supply cost recovery factors to implement a
17 power supply cost recovery clause incorporated in the electric
18 rates or rate schedule of the utility. The power supply and cost
19 review shall be conducted as a contested case pursuant to chapter 4
20 of the administrative procedures act of 1969, ~~Act No. 306 of the~~
21 ~~Public Acts of 1969.~~**1969 PA 306, MCL 24.271 TO 24.287.**

22 (6) In its final order in a power supply and cost review, the
23 commission shall evaluate the reasonableness and prudence of the
24 decisions underlying the power supply cost recovery plan filed by
25 ~~the~~**AN ELECTRIC** utility ~~pursuant to~~**UNDER** subsection (3), and shall
26 approve, disapprove, or amend the power supply cost recovery plan
27 accordingly. In evaluating the decisions underlying the power

1 supply cost recovery plan, the commission shall consider the cost
2 and availability of the electrical generation available to the
3 utility; the cost of short-term firm purchases available to the
4 utility; the availability of interruptible service; the ability of
5 the utility to reduce or to eliminate any firm sales to out-of-
6 state customers if the utility is not a multi-state utility whose
7 firm sales are subject to other regulatory authority; whether the
8 utility has taken all appropriate actions to minimize the cost of
9 fuel; and other relevant factors. The commission shall approve,
10 reject, or amend the 12 monthly power supply cost recovery factors
11 requested by the utility in its power supply cost recovery plan.
12 The factors shall not reflect items the commission could reasonably
13 anticipate would be disallowed under subsection (13). The factors
14 ordered shall be described in fixed dollar amounts per unit of
15 electricity, but may include specific amounts contingent on future
16 events.

17 (7) In its final order in a power supply and cost review, the
18 commission shall evaluate the decisions underlying the 5-year
19 forecast filed by a ~~AN ELECTRIC~~ utility pursuant to ~~UNDER~~
20 subsection (4). The commission may also indicate any cost items in
21 the 5-year forecast that, on the basis of present evidence, the
22 commission would be unlikely to permit the utility to recover from
23 its customers in rates, rate schedules, or power supply cost
24 recovery factors established in the future.

25 (8) The commission, on its own motion or the motion of any
26 party, may make a finding and enter a temporary order granting
27 approval or partial approval of a power supply cost recovery plan

1 in a power supply and cost recovery review, after first having
2 given notice to the parties to the review, and after having
3 afforded to the parties to the review a reasonable opportunity for
4 a full and complete hearing. A temporary order made ~~pursuant to~~
5 **UNDER** this subsection ~~shall be~~ **IS** considered a final order for
6 purposes of judicial review.

7 (9) If the commission has made a final or temporary order in a
8 power supply and cost review, ~~the~~ **AN ELECTRIC** utility may each
9 month incorporate in its rates for the period covered by the order
10 any amounts up to the power supply cost recovery factors permitted
11 in that order. If the commission has not made a final or temporary
12 order within 3 months ~~of~~ **AFTER** the submission of a complete power
13 supply cost recovery plan, or by the beginning of the period
14 covered in the plan, whichever comes later, or if a temporary order
15 has expired without being extended or replaced, then pending an
16 order ~~which~~ **THAT** determines the power supply cost recovery factors,
17 a utility may each month adjust its rates to incorporate all or a
18 part of the power supply cost recovery factors requested in its
19 plan. Any amounts collected under the power supply cost recovery
20 factors before the commission makes its final order ~~shall be~~ **IS**
21 subject to prompt refund with interest to the extent that the total
22 amounts collected exceed the total amounts determined in the
23 commission's final order to be reasonable and prudent for the same
24 period of time.

25 (10) Not ~~less~~ **LATER** than 3 months before the beginning of the
26 third quarter of the 12-month period ~~, the~~ **DESCRIBED IN SUBSECTION**
27 **(3), AN ELECTRIC** utility may file a revised power supply cost

1 recovery plan ~~which shall cover~~ **THAT COVERS** the remainder of the
2 12-month period. Upon receipt of the revised power supply cost
3 recovery plan, the commission shall reopen the power supply and
4 cost review. In addition, the commission may reopen the power
5 supply and cost review on its own motion or on the showing of good
6 cause by any party if at least 6 months have elapsed since the
7 utility submitted its complete filing and if there are at least 60
8 days remaining in the 12-month period under consideration. A
9 reopened power supply and cost review shall be conducted as a
10 contested case pursuant to chapter 4 of the administrative
11 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969,~~
12 **1969 PA 306, MCL 24.271 TO 24.287**, and in accordance with
13 subsections (3), (6), (8), and (9).

14 (11) Not ~~more~~ **LATER** than 45 days ~~following~~ **AFTER** the last day
15 of each billing month in which a power supply cost recovery factor
16 has been applied to customers' bills, ~~the~~ **AN ELECTRIC** utility shall
17 file with the commission a detailed statement for that month of the
18 revenues recorded pursuant to the power supply cost recovery factor
19 and the allowance for cost of power supply included in the base
20 rates established in the latest commission order for the utility,
21 and the cost of power supply. The detailed statement shall be in
22 the manner and form prescribed by the commission. The commission
23 shall establish procedures for insuring that the detailed statement
24 is promptly verified and corrected if necessary.

25 (12) Not less than once a year, and not later than 3 months
26 after the end of the 12-month period covered by a ~~a~~ **AN ELECTRIC**
27 utility's power supply cost recovery plan, the commission shall

1 commence a proceeding, to be known as a power supply cost
2 reconciliation, as a contested case pursuant to chapter 4 of the
3 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
4 ~~Acts of 1969. Reasonable 1969 PA 306, MCL 24.271 TO 24.287. THE~~
5 **COMMISSION SHALL PERMIT REASONABLE** discovery ~~shall be permitted~~
6 before and during the reconciliation proceeding in order to assist
7 parties and interested persons in obtaining evidence concerning
8 reconciliation issues including, but not limited to, the
9 reasonableness and prudence of expenditures and the amounts
10 collected pursuant to the clause. At the power supply cost
11 reconciliation the commission shall reconcile the revenues recorded
12 pursuant to the power supply cost recovery factors and the
13 allowance for cost of power supply included in the base rates
14 established in the latest commission order for the utility with the
15 amounts actually expensed and included in the cost of power supply
16 by the utility. The commission shall consider any issue regarding
17 the reasonableness and prudence of expenses for which customers
18 were charged if the issue was not considered adequately at a
19 previously conducted power supply and cost review.

20 (13) In its order in a power supply cost reconciliation, the
21 commission shall **DO ALL OF THE FOLLOWING:**

22 (a) Disallow cost increases resulting from changes in
23 accounting or rate-making expense treatment not previously approved
24 by the commission. The commission may order the utility to pay a
25 penalty **OF** not ~~to exceed~~ **MORE THAN** 25% of the amount improperly
26 collected. Costs incurred by the utility for penalty payments shall
27 not be charged to customers.

1 (b) ~~Disallow any capacity charges associated with power~~
2 ~~purchased for periods in excess of 6 months unless the utility has~~
3 ~~obtained the prior approval of the commission. If **NOT DISALLOW THE**~~
4 ~~**CAPACITY CHARGES FOR ANY FACILITIES IF** the commission has approved~~
5 ~~capacity charges in a contract with a qualifying facility, as **THAT**~~
6 ~~**TERM IS** defined by the federal energy regulatory commission **FEDERAL**~~
7 ~~**ENERGY REGULATORY COMMISSION** pursuant to the public utilities~~
8 ~~regulatory policies act of 1978, Public Law 95-617, 92 Stat. **STAT**~~
9 ~~3117, the commission shall not disallow the capacity charges for~~
10 ~~the facility in the power supply cost reconciliation unless the~~
11 ~~commission has ordered revised capacity charges upon~~
12 ~~reconsideration pursuant to **UNDER** this subsection. A contract shall~~
13 ~~be **IS** valid and binding in accordance with its terms, and capacity~~
14 ~~charges paid pursuant to such a **THAT** contract shall be **ARE**~~
15 ~~recoverable costs of the utility for rate-making purposes~~
16 ~~notwithstanding that the order approving such a **THAT** contract is~~
17 ~~later vacated, modified, or otherwise held to be invalid in whole~~
18 ~~or in part if the order approving the contract has not been stayed~~
19 ~~or suspended by a competent court within 30 days after the date of~~
20 ~~the order, or within 30 days of the effective date of the 1987~~
21 ~~amendatory act that added subsection (19) **BY JULY 29, 1987** if the~~
22 ~~order was issued after September 1, 1986, and before the effective~~
23 ~~date of the 1987 amendatory act that added subsection (19). **JUNE**~~
24 ~~**29, 1987.** The scope and manner of the review of capacity charges~~
25 ~~for a qualifying facility shall be determined by the commission.~~
26 ~~Except as to approvals for qualifying facilities granted by the~~
27 ~~commission prior to **BEFORE** June 1, 1987, proceedings before the~~

1 commission seeking ~~such~~ **THOSE** approvals shall be conducted as a
2 contested case pursuant to chapter 4 of the administrative
3 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969.~~
4 **1969 PA 306, MCL 24.271 TO 24.287.** The commission, upon its own
5 motion or upon application of any person, may reconsider its
6 approval of capacity charges in a contested case hearing after
7 passage of a period necessary for financing the qualifying
8 facility, ~~provided that~~ **IF BOTH OF THE FOLLOWING APPLY:**

9 (i) The commission has first issued an order making a finding
10 based on evidence presented in a contested case that there has been
11 a substantial change in circumstances since the commission's
12 initial approval. ~~and~~

13 (ii) ~~Such a~~ **THE** commission finding ~~shall be~~ **IS** set forth in a
14 commission order subject to immediate judicial review.

15 The financing period for a qualifying facility during which
16 previously approved capacity charges shall not be subject to
17 commission reconsideration shall be 17.5 years, beginning with the
18 date of commercial operation, for all qualifying facilities, except
19 that the minimum financing period before reconsideration of the
20 previously approved capacity charges shall be for the duration of
21 the financing for a qualifying facility ~~which~~ **THAT** produces
22 electric energy by the use of biomass, waste, wood, hydroelectric,
23 wind, and other renewable resources, or any combination of
24 renewable resources, as the primary energy source.

25 (c) Disallow net increased costs attributable to a generating
26 plant outage of more than 90 days in duration unless the utility
27 demonstrates by clear and satisfactory evidence that the outage, or

1 any part of the outage, was not caused or prolonged by the
2 utility's negligence or by unreasonable or imprudent management.

3 (d) Disallow transportation costs attributable to capital
4 investments to develop a utility's capability to transport fuel or
5 relocate fuel at the utility's facilities and disallow unloading
6 and handling expenses incurred after receipt of fuel by the
7 utility.

8 (e) Disallow the cost of fuel purchased from an affiliated
9 company to the extent that ~~such~~**THE** fuel is more costly than fuel
10 of requisite quality available at or about the same time from other
11 suppliers with whom it would be comparably cost beneficial to deal.

12 (f) Disallow charges unreasonably or imprudently incurred for
13 fuel not taken.

14 (g) Disallow additional costs resulting from unreasonably or
15 imprudently renegotiated fuel contracts.

16 (h) Disallow penalty charges unreasonably or imprudently
17 incurred.

18 (i) Disallow demurrage charges.

19 (j) Disallow increases in charges for nuclear fuel disposal
20 unless the utility has received the prior approval of the
21 commission.

22 (14) In its order in a power supply cost reconciliation, the
23 commission shall require ~~a~~**AN ELECTRIC** utility to refund to
24 customers or credit to customers' bills any net amount determined
25 to have been recovered over the period covered in excess of the
26 amounts determined to have been actually expensed by the utility
27 for power supply, and to have been incurred through reasonable and

1 prudent actions not precluded by the commission order in the power
2 supply and cost review. ~~Such~~ **THE COMMISSION SHALL APPORTION THE**
3 refunds or credits ~~shall be apportioned~~ among the customers of the
4 utility utilizing procedures that the commission determines to be
5 reasonable. The commission may adopt different procedures with
6 respect to customers served under the various rate schedules of the
7 utility and may, in appropriate circumstances, order refunds or
8 credits in proportion to the excess amounts actually collected from
9 each such customer during the period covered.

10 (15) In its order in a power supply cost reconciliation, the
11 commission shall authorize ~~a~~ **AN ELECTRIC** utility to recover from
12 customers any net amount by which the amount determined to have
13 been recovered over the period covered was less than the amount
14 determined to have been actually expensed by the utility for power
15 supply, and to have been incurred through reasonable and prudent
16 actions not precluded by the commission order in the power supply
17 and cost review. For excess costs incurred through management
18 actions contrary to the commission's power supply and cost review
19 order, the commission shall authorize a utility to recover costs
20 incurred for power supply in the reconciliation period in excess of
21 the amount recovered over the period only if the utility
22 demonstrates by clear and convincing evidence that the excess
23 expenses were beyond the ability of the utility to control through
24 reasonable and prudent actions. For excess costs incurred through
25 management actions consistent with the commission's power supply
26 and cost review order, the commission shall authorize a utility to
27 recover costs incurred for power supply in the reconciliation

1 period in excess of the amount recovered over the period only if
2 the utility demonstrates that the level of ~~such~~**THOSE** expenses
3 resulted from reasonable and prudent management actions. ~~Such~~**THE**
4 amounts in excess of the amounts actually recovered by the utility
5 for power supply shall be apportioned among and charged to the
6 customers of the utility utilizing procedures that the commission
7 determines to be reasonable. The commission may adopt different
8 procedures with respect to customers served under the various rate
9 schedules of the utility and may, in appropriate circumstances,
10 order charges to be made in proportion to the amounts ~~which~~**THAT**
11 would have been paid by ~~such~~**THOSE** customers if the amounts in
12 excess of the amounts actually recovered by the utility for cost of
13 power supply had been included in the power supply cost recovery
14 factors with respect to ~~such~~**THOSE** customers during the period
15 covered. Charges for ~~such~~**THE** excess amounts shall be spread over a
16 period that the commission determines to be appropriate.

17 (16) If the commission orders refunds or credits ~~pursuant to~~
18 **UNDER** subsection (14), or additional charges to customers ~~pursuant~~
19 ~~to~~**UNDER** subsection (15), in its final order in a power supply cost
20 reconciliation, the refunds, credits, or additional charges shall
21 include interest. In determining the interest included in a refund,
22 credit, or additional charge ~~pursuant to~~**UNDER** this subsection, the
23 commission shall consider, to the extent material and practicable,
24 the time at which the excess recoveries or insufficient recoveries,
25 or both occurred. The commission shall determine a rate of interest
26 for excess recoveries, refunds, and credits equal to the greater of
27 the average short-term borrowing rate available to the utility

1 during the appropriate period, or the authorized rate of return on
2 the common stock of the utility during that same period. Costs
3 incurred by the utility for refunds and interest on refunds shall
4 not be charged to customers. The commission shall determine a rate
5 of interest for insufficient recoveries and additional charges
6 equal to the average short-term borrowing rate available to the
7 utility during the appropriate period.

8 (17) To avoid undue hardship or unduly burdensome or excessive
9 cost, the commission may **DO ALL OF THE FOLLOWING:**

10 (a) Exempt an electric utility with fewer than 200,000
11 customers in ~~the THIS state of Michigan~~ from 1 or more of the
12 procedural provisions of this section or may modify the filing
13 requirements of this section.

14 (b) Exempt an energy utility organized as a cooperative
15 corporation ~~pursuant to UNDER~~ sections 98 to 109 of ~~Act No. 327 of~~
16 ~~the Public Acts of 1931, being sections 450.98 to 450.109 of the~~
17 ~~Michigan Compiled Laws, 1931 PA 327, MCL 450.98 TO 450.109,~~ from 1
18 or more of the provisions of this section.

19 (18) Notwithstanding any other provision of this act, the
20 commission may, upon application by an electric utility, set power
21 supply cost recovery factors, in a manner otherwise consistent with
22 this act, in an order resulting from a general rate case. ~~Within~~
23 ~~120 days following the effective date of this section,~~ **BY OCTOBER**
24 **27, 1987,** for the purpose of setting power supply cost recovery
25 factors, the commission shall permit an electric utility to reopen
26 a general rate case in which a final order was issued within 120
27 days before or after ~~the effective date of this section~~ **JUNE 29,**

1 1987 or to amend an application or reopen the evidentiary record in
 2 a pending general rate case. If the commission sets power supply
 3 cost recovery factors in an order resulting from a general rate
 4 case, **ALL OF THE FOLLOWING APPLY:**

5 (a) The power supply cost recovery factors shall cover a
 6 future period of 48 months or the number of months ~~which~~ **THAT**
 7 elapse until the commission orders new power supply cost recovery
 8 factors in a general rate case, whichever is the shorter period.

9 (b) Annual reconciliation proceedings shall be conducted
 10 ~~pursuant to~~ **UNDER** subsection (12) and if an annual reconciliation
 11 proceeding shows a recoverable amount ~~pursuant to~~ **UNDER** subsection
 12 (15), the commission shall authorize the electric utility to defer
 13 the amount and to accumulate interest on the amount ~~pursuant to~~
 14 **UNDER** subsection (16), and in the next order resulting from a
 15 general rate case authorize the utility to recover the amount and
 16 interest from its customers in the manner provided in subsection
 17 (15).

18 (c) The power supply cost recovery factors ~~shall~~ **ARE** not be
 19 subject to revision ~~pursuant to~~ **UNDER** subsection (10).

20 (19) ~~Five years after the effective date of the amendatory act~~
 21 ~~that added this subsection,~~ **BY JUNE 29, 1992,** and every 5 years
 22 thereafter, the standing committees of the house and senate ~~that~~
 23 ~~deal with~~ **RESPONSIBLE FOR LEGISLATION CONCERNING** public utilities
 24 shall review the amendatory act that added this subsection. **EFFECT**
 25 **OF 1987 PA 81.**

26 Sec. 6s. ~~(1) An electric utility that proposes to construct an~~
 27 ~~electric generation facility, make a significant investment in an~~

~~1 existing electric generation facility, purchase an existing
2 electric generation facility, or enter into a power purchase
3 agreement for the purchase of electric capacity for a period of 6
4 years or longer may submit an application to the commission seeking
5 a certificate of necessity for that construction, investment, or
6 purchase if that construction, investment, or purchase costs
7 \$500,000,000.00 or more and a portion of the costs would be
8 allocable to retail customers in this state. A significant
9 investment in an electric generation facility includes a group of
10 investments reasonably planned to be made over a multiple year
11 period not to exceed 6 years for a singular purpose such as
12 increasing the capacity of an existing electric generation plant.
13 The commission shall not issue a certificate of necessity under
14 this section for any environmental upgrades to existing electric
15 generation facilities or for a renewable energy system.~~

16 (1) THE COMMISSION SHALL, WITHIN 120 DAYS OF THE EFFECTIVE
17 DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T AND EVERY 4 YEARS
18 THEREAFTER, COMMENCE A PROCEEDING TO ESTABLISH STATEWIDE PARAMETERS
19 FOR INTEGRATED RESOURCE PLANS REQUIRED UNDER SUBSECTION (2). THE
20 COMMISSION SHALL, IN CONSULTATION WITH THE MICHIGAN AGENCY FOR
21 ENERGY AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY, DO ALL OF THE
22 FOLLOWING IN A PROCEEDING UNDER THIS SUBSECTION:

23 (A) CONDUCT AN ASSESSMENT OF THE POTENTIAL FOR REDUCTION IN
24 ENERGY WASTE IN THIS STATE, BASED ON WHAT IS ECONOMICALLY FEASIBLE,
25 AS WELL AS TECHNOLOGICALLY FEASIBLE.

26 (B) IDENTIFY ANY NEW STATE OR FEDERAL ENVIRONMENTAL STANDARD,
27 LAW, OR RULE AND HOW THAT STANDARD, LAW, OR RULE WOULD AFFECT

1 ELECTRIC UTILITIES IN THIS STATE.

2 (C) IDENTIFY ANY PROPOSED STATE OR FEDERAL ENVIRONMENTAL
3 STANDARD, LAW, OR RULE THAT HAS BEEN PUBLISHED IN THE MICHIGAN
4 REGISTER OR THE FEDERAL REGISTER AND HOW THE PROPOSED STANDARD,
5 LAW, OR RULE WOULD AFFECT ELECTRIC UTILITIES IN THIS STATE.

6 (D) IDENTIFY ANY REQUIRED RELIABILITY STANDARDS IN AREAS OF
7 THIS STATE.

8 (E) ESTABLISH THE MODELING SCENARIOS AND ASSUMPTIONS EACH
9 ELECTRIC UTILITY MUST USE IN DEVELOPING ITS INTEGRATED RESOURCE
10 PLAN FILED UNDER SUBSECTION (2), INCLUDING ALL OF THE FOLLOWING:

11 (i) ANY REQUIRED RELIABILITY STANDARDS.

12 (ii) ALL APPLICABLE STATE AND FEDERAL ENVIRONMENTAL STANDARDS,
13 LAWS, AND RULES IDENTIFIED IN THIS SUBSECTION.

14 (iii) ANY REQUIRED INVESTMENTS IN GENERATION, TRANSMISSION,
15 AND DISTRIBUTION INFRASTRUCTURE.

16 (iv) ANY SUPPLY-SIDE AND DEMAND-SIDE RESOURCES THAT COULD
17 ADDRESS ANY NEED FOR ADDITIONAL GENERATION CAPACITY, INCLUDING, BUT
18 NOT LIMITED TO, THE TYPE OF GENERATION TECHNOLOGY FOR ANY PROPOSED
19 GENERATION FACILITY, PROJECTED ENERGY EFFICIENCY SAVINGS, AND
20 PROJECTED LOAD MANAGEMENT AND DEMAND RESPONSE SAVINGS.

21 (v) ANY REGIONAL INFRASTRUCTURE LIMITATIONS IN THIS STATE.

22 (vi) THE PROJECTED COSTS OF DIFFERENT TYPES OF FUEL USED FOR
23 ELECTRIC GENERATION.

24 (F) ALLOW OTHER STATE AGENCIES TO PROVIDE INPUT REGARDING ANY
25 OTHER REGULATORY REQUIREMENTS THAT SHOULD BE INCLUDED IN MODELING
26 SCENARIOS OR ASSUMPTIONS.

27 (G) PUBLISH A COPY OF THE PROPOSED MODELING SCENARIOS AND

1 ASSUMPTIONS TO BE USED IN INTEGRATED RESOURCE PLANS ON THE
2 COMMISSION'S WEBSITE.

3 (H) BEFORE ISSUING THE FINAL MODELING SCENARIOS AND
4 ASSUMPTIONS EACH ELECTRIC UTILITY MUST USE IN DEVELOPING ITS
5 INTEGRATED RESOURCE PLAN, RECEIVE WRITTEN COMMENTS AND HOLD
6 HEARINGS TO SOLICIT PUBLIC INPUT REGARDING THE PROPOSED MODELING
7 SCENARIOS AND ASSUMPTIONS.

8 (2) NOT LATER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THE
9 AMENDATORY ACT THAT ADDED SECTION 6T, EACH ELECTRIC UTILITY WHOSE
10 RATES ARE REGULATED BY THE COMMISSION SHALL FILE WITH THE
11 COMMISSION AN INTEGRATED RESOURCE PLAN THAT MINIMIZES THE NET
12 PRESENT VALUE OF FORWARD-LOOKING CAPITAL AND PRODUCTION COSTS WHILE
13 MEETING ALL APPLICABLE STATE AND FEDERAL RELIABILITY AND
14 ENVIRONMENTAL REGULATIONS AND PROVIDES A LONG-TERM PROJECTION OF
15 THE UTILITY'S LOAD OBLIGATIONS AND A PLAN TO MEET THOSE OBLIGATIONS
16 OVER THE ENSUING TERM OF THE PLAN. THE COMMISSION SHALL ESTABLISH
17 FILING REQUIREMENTS FOR AN INTEGRATED RESOURCE PLAN THAT
18 DEMONSTRATES HOW THE UTILITY WILL COMPLY WITH REQUIREMENTS TO
19 PROVIDE GENERATION RELIABILITY, INCLUDING MEETING RESERVE MARGIN
20 REQUIREMENTS ESTABLISHED BY THE COMMISSION OR A FEDERALLY
21 AUTHORIZED REGIONAL TRANSMISSION SYSTEM OPERATOR FOR A 5-YEAR, 10-
22 YEAR, AND 15-YEAR PLANNING PERIOD.

23 (3) ~~(2) The~~ FOR AN ELECTRIC UTILITY WITH FEWER THAN 1,000,000
24 CUSTOMERS, THE commission may implement separate FILING
25 REQUIREMENTS, review criteria, and approval standards for electric
26 utilities with less than 1,000,000 retail customers who seek a
27 certificate of necessity for projects costing less than

1 ~~§500,000,000.00~~. THAT DIFFER FROM THOSE ESTABLISHED UNDER SUBSECTION
2 (2). AN ELECTRIC UTILITY PROVIDING ELECTRIC TARIFF SERVICE TO
3 CUSTOMERS BOTH IN THIS STATE AND IN AT LEAST 1 OTHER STATE MAY
4 DESIGN ITS INTEGRATED RESOURCE PLAN TO COVER ALL ITS CUSTOMERS ON
5 THAT MULTI-STATE BASIS. IF AN ELECTRIC UTILITY HAS FILED A MULTI-
6 STATE INTEGRATED RESOURCE PLAN THAT INCLUDES ITS SERVICE AREA IN
7 THIS STATE WITH THE RELEVANT UTILITY REGULATORY COMMISSION IN
8 ANOTHER STATE IN WHICH IT PROVIDES TARIFF SERVICE TO RETAIL
9 CUSTOMERS, THE COMMISSION SHALL ACCEPT THAT INTEGRATED RESOURCE
10 PLAN FILING IN THIS STATE. HOWEVER, THE COMMISSION MAY REQUIRE
11 SUPPLEMENTAL INFORMATION IF NECESSARY TO EVALUATE THE PLAN. UPON
12 REQUEST OF AN ELECTRIC UTILITY, THE COMMISSION MAY ADJUST THE
13 FILING DATES FOR A MULTI-STATE INTEGRATED RESOURCE PLAN FILING IN
14 THIS STATE TO PLACE ITS REVIEW ON THE SAME TIMELINE AS OTHER
15 RELEVANT STATE REVIEWS.

16 ~~—— (3) An electric utility submitting an application under this~~
17 ~~section may request 1 or more of the following:~~

18 ~~—— (a) A certificate of necessity that the power to be supplied~~
19 ~~as a result of the proposed construction, investment, or purchase~~
20 ~~is needed.~~

21 ~~—— (b) A certificate of necessity that the size, fuel type, and~~
22 ~~other design characteristics of the existing or proposed electric~~
23 ~~generation facility or the terms of the power purchase agreement~~
24 ~~represent the most reasonable and prudent means of meeting that~~
25 ~~power need.~~

26 ~~—— (c) A certificate of necessity that the price specified in the~~
27 ~~power purchase agreement will be recovered in rates from the~~

1 ~~electric utility's customers.~~

2 ~~—— (d) A certificate of necessity that the estimated purchase or~~
3 ~~capital costs of and the financing plan for the existing or~~
4 ~~proposed electric generation facility, including, but not limited~~
5 ~~to, the costs of siting and licensing a new facility and the~~
6 ~~estimated cost of power from the new or proposed electric~~
7 ~~generation facility, will be recoverable in rates from the electric~~
8 ~~utility's customers subject to subsection (4)(c).~~

9 (4) BEFORE FILING ITS FIRST INTEGRATED RESOURCE PLAN UNDER
10 THIS SECTION, EACH ELECTRIC UTILITY WHOSE RATES ARE REGULATED BY
11 THE COMMISSION SHALL ISSUE A REQUEST FOR PROPOSALS TO PROVIDE
12 GENERATION CAPACITY RESOURCES TO SERVE THE UTILITY'S REASONABLY
13 PROJECTED ELECTRIC LOADS AND APPLICABLE RESERVE MARGINS FOR ITS
14 CUSTOMERS IN THIS STATE AND CUSTOMERS THE UTILITY SERVES IN OTHER
15 STATES DURING THE INITIAL 3-YEAR PLANNING PERIOD TO BE CONSIDERED
16 IN ITS INTEGRATED RESOURCE PLAN TO BE FILED UNDER THIS SECTION. THE
17 REQUEST FOR PROPOSALS IS ONLY REQUIRED BEFORE THE UTILITY'S FILING
18 OF ITS FIRST INTEGRATED RESOURCE PLAN. RESPONSES TO A REQUEST FOR
19 PROPOSALS ISSUED UNDER THIS SUBSECTION SHOULD INCLUDE PROPOSALS TO
20 PROVIDE SUPPLY SIDE TURNKEY CONSTRUCTION OF GENERATING CAPACITY
21 RESOURCES, RENEWABLE GENERATION, OR CAPACITY STORAGE, WHICH ASSETS
22 ARE DESIGNED TO BE PURCHASED BY THE UTILITY, AND MAY INCLUDE
23 PROPOSALS FOR THE SALE OF EXISTING GENERATING ASSETS, BUT SHALL NOT
24 INCLUDE PROPOSALS FOR DEMAND SIDE RESOURCES. RESPONDENTS TO A
25 REQUEST FOR PROPOSALS MAY REQUEST THAT CERTAIN PROPRIETARY
26 INFORMATION BE EXEMPT FROM PUBLIC DISCLOSURE AS ALLOWED BY THE
27 COMMISSION. A UTILITY THAT ISSUES A REQUEST FOR PROPOSALS UNDER

1 THIS SUBSECTION SHALL USE THE RESULTING PROPOSALS TO INFORM ITS
2 INTEGRATED RESOURCE PLAN FILED UNDER THIS SECTION AND INCLUDE THOSE
3 PROPOSALS AS PART OF ITS INTEGRATED RESOURCE PLAN. A UTILITY IS NOT
4 REQUIRED TO ACCEPT ANY PROPOSALS SUBMITTED IN RESPONSE TO ITS
5 REQUEST FOR PROPOSALS.

6 (5) ~~(4) Within~~ NOT LATER THAN 270 days ~~of the filing of an~~
7 ~~application~~ AFTER AN ELECTRIC UTILITY FILES AN INTEGRATED RESOURCE
8 PLAN under this section, the commission shall issue an order
9 ~~granting~~ APPROVING or denying, WITH RECOMMENDED CHANGES, the
10 ~~requested certificate of necessity.~~ UTILITY'S INTEGRATED RESOURCE
11 PLAN. The commission shall hold a hearing on the ~~application.~~
12 INTEGRATED RESOURCE PLAN. The hearing shall be conducted as a
13 contested case pursuant to chapter 4 of the administrative
14 procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. ~~The~~
15 ~~commission shall allow intervention by interested persons.~~
16 Reasonable THE COMMISSION SHALL REQUEST AN ADVISORY OPINION FROM
17 THE DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING WHETHER THE
18 INTEGRATED RESOURCE PLAN CAN REASONABLY BE EXPECTED TO ACHIEVE
19 COMPLIANCE WITH APPLICABLE STATE AND FEDERAL ENVIRONMENTAL
20 REGULATIONS, AND WHETHER THE PROPOSED INTEGRATED RESOURCE PLAN CAN
21 REASONABLY BE EXPECTED TO RESULT IN POLLUTION REDUCTIONS REQUIRED
22 BY APPLICABLE STATE OR FEDERAL REGULATIONS. THE COMMISSION MAY
23 INVITE OTHER STATE AGENCIES TO PROVIDE TESTIMONY REGARDING OTHER
24 RELEVANT REGULATORY REQUIREMENTS RELATED TO THE INTEGRATED RESOURCE
25 PLAN. THE COMMISSION SHALL PERMIT REASONABLE ~~discovery shall be~~
26 ~~permitted before~~ AFTER AN INTEGRATED RESOURCE PLAN IS FILED and
27 during the hearing in order to assist parties and interested

1 persons in obtaining evidence concerning the ~~application,~~
2 **INTEGRATED RESOURCE PLAN**, including, but not limited to, the
3 reasonableness and prudence of the ~~construction, investment, or~~
4 ~~purchase for which the certificate of necessity has been requested.~~
5 **PLAN**. The commission shall ~~grant the request~~ **APPROVE THE INTEGRATED**
6 **RESOURCE PLAN** if it determines all of the following:

7 (a) ~~That the~~ **THE** electric utility has demonstrated a need for
8 the ~~power that would be supplied by the existing or proposed~~
9 ~~electric generation facility or pursuant to the proposed power~~
10 ~~purchase agreement through its approved integrated resource plan~~
11 ~~that complies with subsection (11).~~ **INVESTMENTS AND RESOURCES**
12 **INCLUDED IN THE PROPOSED INTEGRATED RESOURCE PLAN.**

13 (B) **THE ELECTRIC UTILITY HAS DEMONSTRATED THAT THE INVESTMENTS**
14 **AND RESOURCES INCLUDED IN THE PROPOSED INTEGRATED RESOURCE PLAN**
15 **WOULD BE SUFFICIENT TO PROVIDE THE CAPACITY NECESSARY TO SERVE THE**
16 **UTILITY'S REASONABLY PROJECTED ELECTRIC LOADS AND APPLICABLE**
17 **RESERVE MARGINS.**

18 (C) ~~(b)~~ The information supplied indicates that the ~~existing~~
19 ~~or proposed electric generation facility~~ **PROPOSED INTEGRATED**
20 **RESOURCE PLAN AND THE RESOURCES CONTAINED IN THE PLAN** will comply
21 with all applicable state and federal environmental standards,
22 laws, and rules.

23 (D) ~~(e)~~ The estimated cost of power from the existing or
24 proposed electric generation facility or the price of power
25 specified in the proposed power purchase agreement is reasonable.
26 The commission shall find that the cost is reasonable if, in the
27 construction or investment in a new or existing facility, to the

1 extent it is commercially practicable, the estimated costs are the
 2 result of competitively bid engineering, procurement, and
 3 construction contracts, or in a power purchase agreement, the cost
 4 is the result of a competitive solicitation. Up to 150 days after
 5 an electric utility makes its initial filing, it may file to update
 6 its cost estimates if they have materially changed. No other aspect
 7 of the initial filing may be modified unless the application is
 8 withdrawn and refiled. A utility's filing updating its cost
 9 estimates does not extend the period for the commission to issue an
 10 order ~~granting~~ **APPROVING** or denying a ~~certificate of necessity~~. **THE**
 11 **INTEGRATED RESOURCE PLAN**. An affiliate of an electric utility that
 12 serves customers in this state and at least 1 other state may
 13 participate in the competitive bidding to provide engineering,
 14 procurement, and construction services to that electric utility for
 15 a project covered by this section.

16 (E) ~~(d) The existing or proposed electric generation facility~~
 17 ~~or proposed power purchase agreement~~ **PROPOSED INTEGRATED RESOURCE**
 18 **PLAN** represents the most reasonable and prudent means of meeting
 19 the ~~power need~~ **CAPACITY NEEDS** relative to other resource options
 20 for meeting ~~power demand, including energy efficiency programs and~~
 21 ~~electric transmission efficiencies~~. **CAPACITY NEEDS, INCLUDING ENERGY**
 22 **EFFICIENCY PROGRAMS, DEMAND SIDE MANAGEMENT, AND TRANSMISSION**
 23 **EFFICIENCIES. TO DETERMINE WHETHER THE INTEGRATED RESOURCE PLAN IS**
 24 **THE MOST REASONABLE AND PRUDENT MEANS OF MEETING CAPACITY NEEDS,**
 25 **THE COMMISSION SHALL CONSIDER WHETHER THE PLAN APPROPRIATELY**
 26 **BALANCES ALL OF THE FOLLOWING FACTORS:**

27 (i) **RESOURCE ADEQUACY AND CAPACITY TO SERVE ANTICIPATED PEAK**

1 ELECTRIC LOADS AND RESERVE MARGIN REQUIREMENTS.

2 (ii) COMPLIANCE WITH APPLICABLE STATE AND FEDERAL
3 ENVIRONMENTAL REGULATIONS.

4 (iii) COMPETITIVE PRICING.

5 (iv) RELIABILITY.

6 (v) COMMODITY PRICE RISKS.

7 (vi) DIVERSITY OF GENERATION SUPPLY.

8 (F) ~~(e)~~—To the extent practicable, the construction or
9 investment in a new or existing ~~facility~~**CAPACITY RESOURCE** in this
10 state is completed using a workforce composed of residents of this
11 state as determined by the commission. This subdivision does not
12 apply to a ~~facility~~**CAPACITY RESOURCE** that is located in a county
13 that lies on the border with another state.

14 (6) ~~(5)~~—The commission ~~may~~**SHALL** consider any other costs or
15 information related to the costs associated with the ~~power that~~
16 ~~would be supplied by the existing or proposed electric generation~~
17 ~~facility or pursuant to the proposed purchase agreement~~**PROPOSED**
18 **INTEGRATED RESOURCE PLAN** or alternatives to the ~~proposal~~**PLAN**
19 raised by intervening parties, **WHICH MAY INCLUDE ELECTRIC**
20 **CUSTOMERS, POTENTIAL RESOURCE SUPPLIERS OF THE UTILITY'S PROPOSED**
21 **INTEGRATED RESOURCE PLAN, ANY REGIONAL TRANSMISSION ORGANIZATION**
22 **SERVING ANY PORTION OF THE UTILITY'S SERVICE AREA, THE ATTORNEY**
23 **GENERAL OF THIS STATE, OR ANY OTHER PARTIES APPROVED BY THE**
24 **COMMISSION.**

25 (7) ~~(6)~~—In a ~~certificate of necessity~~**APPROVING AN INTEGRATED**
26 **RESOURCE PLAN** under this section, the commission shall specify the
27 costs approved for the construction of or significant investment in

1 ~~the~~ **AN** electric generation facility, the price approved for the
 2 purchase of ~~the~~ **AN** existing electric generation facility, ~~or~~ the
 3 price approved for ~~the~~ **A** purchase of power pursuant to ~~to~~ **UNDER** the
 4 terms of the power purchase agreement, **OR THE COSTS ASSOCIATED WITH**
 5 **OTHER INVESTMENTS OR RESOURCES USED TO MEET CAPACITY NEEDS THAT ARE**
 6 **INCLUDED IN THE APPROVED INTEGRATED RESOURCE PLAN. FOR POWER**
 7 **PURCHASE AGREEMENTS THAT A UTILITY ENTERS INTO WITH AN ENTITY THAT**
 8 **IS NOT AFFILIATED WITH THAT UTILITY AFTER THE EFFECTIVE DATE OF THE**
 9 **AMENDATORY ACT THAT ADDED SECTION 6T, THE COMMISSION MAY AUTHORIZE**
 10 **A RATE OF RETURN THAT DOES NOT EXCEED THE UTILITY'S WEIGHTED**
 11 **AVERAGE COST OF CAPITAL. THE COSTS FOR SPECIFICALLY IDENTIFIED**
 12 **INVESTMENTS INCLUDED IN AN APPROVED INTEGRATED RESOURCE PLAN THAT**
 13 **ARE COMMENCED WITHIN 3 YEARS AFTER THE COMMISSION'S ORDER APPROVING**
 14 **THE INITIAL PLAN, AMENDED PLAN, OR PLAN REVIEW ARE CONSIDERED**
 15 **REASONABLE AND PRUDENT FOR COST RECOVERY PURPOSES.**

16 (8) ~~(7) The~~ **AN ELECTRIC** utility shall annually, ~~file,~~ or more
 17 ~~frequent~~ **FREQUENTLY** if required by the commission, **FILE** reports to
 18 the commission regarding the status of ~~any project for which a~~
 19 ~~certificate of necessity~~ **AN INTEGRATED RESOURCE PLAN THAT** has been
 20 ~~granted~~ **APPROVED** under subsection ~~(4),~~ **(5)**, including an update
 21 concerning the cost and schedule of ~~that project.~~ **ANY PROJECTS**
 22 **INCLUDED IN THE INTEGRATED RESOURCE PLAN.**

23 (9) ~~(8) If the commission denies any of the relief requested~~
 24 ~~by an electric utility,~~ **AN ELECTRIC UTILITY'S INTEGRATED RESOURCE**
 25 **PLAN,** the electric utility may withdraw its application or proceed
 26 with ~~the~~ **A** proposed construction, purchase, investment, or power
 27 purchase agreement **CONTAINED IN THE WITHDRAWN INTEGRATED RESOURCE**

1 PLAN without a ~~certificate~~ and the assurances granted under this
2 section. IF THE COMMISSION DENIES THE UTILITY'S INTEGRATED RESOURCE
3 PLAN BUT THE UTILITY ACCEPTS THE COMMISSION'S RECOMMENDATIONS
4 REGARDING THE INTEGRATED RESOURCE PLAN, THE INTEGRATED RESOURCE
5 PLAN IS CONSIDERED APPROVED AS MODIFIED BY THE UTILITY CONSISTENT
6 WITH THE COMMISSION'S RECOMMENDATIONS.

7 (10) IF THE COMMISSION DENIES A UTILITY'S INTEGRATED RESOURCE
8 PLAN, AND THE UTILITY DOES NOT ACCEPT THE COMMISSION'S
9 RECOMMENDATIONS REGARDING THE DENIED INTEGRATED RESOURCE PLAN UNDER
10 SUBSECTION (9), THE UTILITY, WITHIN 30 DAYS AFTER THE DATE OF THE
11 FINAL ORDER DENYING THE INTEGRATED RESOURCE PLAN, MAY SUBMIT A
12 REVISED INTEGRATED RESOURCE PLAN TO THE COMMISSION FOR APPROVAL.
13 THE COMMISSION SHALL COMMENCE A CONTESTED CASE HEARING UNDER
14 CHAPTER 4 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
15 306, MCL 24.271 TO 24.287. NOT LATER THAN 90 DAYS AFTER THE DATE ON
16 WHICH THE UTILITY SUBMITS THE REVISED INTEGRATED RESOURCE PLAN TO
17 THE COMMISSION, THE COMMISSION SHALL ISSUE A FINAL ORDER APPROVING
18 OR DENYING, WITH RECOMMENDATIONS, THE REVISED INTEGRATED RESOURCE
19 PLAN.

20 (11) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ORDER BY
21 THE COMMISSION APPROVING AN INTEGRATED RESOURCE PLAN MAY BE
22 REVIEWED BY THE COURT OF APPEALS UPON A FILING BY A PARTY TO THE
23 COMMISSION PROCEEDING WITHIN 30 DAYS AFTER THE ORDER IS ISSUED. ALL
24 APPEALS OF THE ORDER SHALL BE HEARD AND DETERMINED AS EXPEDITIOUSLY
25 AS POSSIBLE WITH LAWFUL PRECEDENCE OVER OTHER MATTERS. REVIEW ON
26 APPEAL SHALL BE BASED SOLELY ON THE RECORD BEFORE THE COMMISSION
27 AND BRIEFS TO THE COURT AND IS LIMITED TO WHETHER THE ORDER

1 CONFORMS TO THE CONSTITUTION AND LAWS OF THIS STATE AND THE UNITED
2 STATES AND IS WITHIN THE AUTHORITY OF THE COMMISSION UNDER THIS
3 ACT.

4 (12) ~~(9) Once the electric generation facility or power~~
5 ~~purchase agreement is considered used and useful or as otherwise~~
6 ~~provided in subsection (12), the~~ **THE** commission shall include in an
7 electric utility's retail rates all reasonable and prudent costs
8 ~~for an electric generation facility or power purchase agreement for~~
9 ~~which a certificate of necessity has been granted.~~ **AN INTEGRATED**
10 **RESOURCE PLAN APPROVED BY THE COMMISSION.** The commission shall not
11 disallow recovery of costs an electric utility incurs in
12 ~~constructing, investing in, or purchasing an electric generation~~
13 ~~facility or in purchasing power pursuant to a power purchase~~
14 ~~agreement for which a certificate of necessity has been granted,~~
15 **IMPLEMENTING AN APPROVED INTEGRATED RESOURCE PLAN,** if the costs do
16 not exceed the costs approved by the commission ~~in the certificate.~~
17 ~~Once the electric generation facility or power purchase agreement~~
18 ~~is considered used and useful or as otherwise provided in~~
19 ~~subsection (12), the~~ **UNDER SUBSECTION (7).** **THE** commission shall
20 include in the electric utility's retail rates costs actually
21 incurred by the electric utility that exceed the costs approved by
22 the commission only if the commission finds that the additional
23 costs are reasonable and prudent. If the actual costs incurred by
24 the electric utility exceed the costs approved by the commission,
25 the electric utility has the burden of proving by a preponderance
26 of the evidence that the costs are reasonable and prudent. The
27 portion of the cost of a plant, facility, ~~or~~ power purchase

1 agreement, ~~which~~ **OR OTHER INVESTMENT IN A RESOURCE THAT MEETS A**
2 **DEMONSTRATED NEED FOR CAPACITY THAT** exceeds 110% of the cost
3 approved by the commission is presumed to have been incurred due to
4 a lack of prudence. The commission may include any or all of the
5 portion of the cost in excess of 110% of the cost approved by the
6 commission if the commission finds by a preponderance of the
7 evidence that the costs were prudently incurred.

8 (13) ~~(10)~~ Within 90 days ~~of~~ **AFTER** the effective date of the
9 amendatory act that added ~~this~~ section **6T**, the commission shall
10 adopt standard application filing forms and instructions for use in
11 all requests for a ~~certificate of necessity~~ **AN INTEGRATED RESOURCE**
12 **PLAN** under this section. The commission may, in its discretion,
13 modify the standard application filing forms and instructions
14 adopted under this section.

15 (14) ~~(11)~~ The commission shall establish standards for an
16 integrated resource plan ~~that shall be~~ filed by an electric utility
17 ~~requesting a certificate of necessity~~ under this section. An
18 integrated resource plan shall include all of the following:

19 (a) A long-term forecast of the electric utility's load growth
20 under various reasonable scenarios.

21 (b) The type of generation technology proposed for ~~the~~ **A**
22 generation facility **CONTAINED IN THE PLAN** and the proposed capacity
23 of the generation facility, including projected fuel and regulatory
24 costs under various reasonable scenarios.

25 (c) Projected energy and capacity purchased or produced by the
26 electric utility ~~pursuant to any renewable portfolio standard~~. **FROM**
27 **A CLEAN ENERGY RESOURCE.**

1 ~~(d) Projected energy efficiency program savings under any~~
2 ~~energy efficiency program requirements and the projected costs for~~
3 ~~that program.~~ **DETAILS REGARDING THE UTILITY'S PLAN TO ELIMINATE**

4 **ENERGY WASTE, INCLUDING THE TOTAL AMOUNT OF WASTE REDUCTION**
5 **EXPECTED TO BE ACHIEVED ANNUALLY, THE COST OF THE PLAN, AND THE**
6 **EXPECTED SAVINGS FOR ITS RETAIL CUSTOMERS.**

7 (e) Projected load management and demand response savings for
8 the electric utility and the projected costs for those programs.

9 (f) An analysis of the availability and costs of other
10 electric resources that could defer, displace, or partially
11 displace the proposed generation facility or purchased power
12 agreement. ~~, including additional renewable energy, energy~~
13 ~~efficiency programs, load management, and demand response, beyond~~
14 ~~those amounts contained in subdivisions (c) to (e).~~

15 ~~(g) Electric~~ **AN ANALYSIS OF POTENTIAL NEW OR UPGRADED ELECTRIC**
16 **transmission options for the electric utility.**

17 **(H) DATA REGARDING THE UTILITY'S CURRENT GENERATION PORTFOLIO**
18 **INCLUDING THE AGE, LICENSING STATUS, AND REMAINING ESTIMATED TIME**
19 **OF OPERATION FOR EACH FACILITY IN THE PORTFOLIO.**

20 **(I) PLANS FOR MEETING CURRENT AND FUTURE CAPACITY NEEDS WITH**
21 **COST ESTIMATES FOR ALL PROPOSED CONSTRUCTION, MAJOR INVESTMENTS,**
22 **AND POWER PURCHASE AGREEMENTS.**

23 **(J) AN ANALYSIS OF THE COST, CAPACITY FACTOR, AND VIABILITY OF**
24 **ALL GENERATION OPTIONS AVAILABLE TO MEET PROJECTED CAPACITY NEEDS.**

25 **(K) PROJECTED ECONOMIC AND ENVIRONMENTAL THREATS THAT COULD**
26 **IMPACT RATES AND THE DELIVERY OF SERVICE.**

27 **(L) PROJECTED RATE IMPACT FOR THE PERIODS COVERED BY THE PLAN.**

1 (M) HOW THE UTILITY WILL COMPLY WITH ALL APPLICABLE STATE AND
2 FEDERAL ENVIRONMENTAL STANDARDS, LAWS, AND RULES.

3 (N) A FORECAST OF THE UTILITY'S PEAK DEMAND AND DETAILS
4 REGARDING HOW THE UTILITY PROPOSES TO REDUCE PEAK DEMAND.

5 (15) ~~(12)~~The commission shall allow financing interest cost
6 recovery in an electric utility's base rates on construction work
7 in progress for capital improvements approved under this section
8 prior to the assets being considered used and useful. Regardless of
9 whether or not the commission authorizes base rate treatment for
10 construction work in progress financing interest expense, an
11 electric utility ~~shall be allowed to~~ **MAY** recognize, accrue, and
12 defer the allowance for funds used during construction related to
13 equity capital.

14 ~~—— (13) As used in this section, "renewable energy system" means~~
15 ~~that term as defined in the clean, renewable, and efficient energy~~
16 ~~act.~~

17 (16) AN ELECTRIC UTILITY MAY SEEK AMENDMENTS TO AN APPROVED
18 INTEGRATED RESOURCE PLAN. THE COMMISSION SHALL CONSIDER THE
19 AMENDMENTS UNDER THE SAME PROCESS AND STANDARDS THAT GOVERN THE
20 REVIEW AND APPROVAL OF AN INTEGRATED RESOURCE PLAN.

21 (17) AN ELECTRIC UTILITY SHALL FILE AN APPLICATION FOR REVIEW
22 OF ITS INTEGRATED RESOURCE PLAN NOT LATER THAN 3 YEARS AFTER THE
23 EFFECTIVE DATE OF THE MOST RECENT COMMISSION ORDER APPROVING A
24 PLAN, A PLAN AMENDMENT, OR A PLAN REVIEW. THE COMMISSION SHALL
25 CONSIDER A PLAN REVIEW UNDER THE SAME PROCESS AND STANDARDS
26 ESTABLISHED IN THIS SECTION FOR REVIEW AND APPROVAL OF AN
27 INTEGRATED RESOURCE PLAN.

1 (18) THE COMMISSION MAY ORDER AN ELECTRIC UTILITY TO FILE A
2 PLAN REVIEW. THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY REQUEST
3 THE COMMISSION TO ORDER A PLAN REVIEW TO ADDRESS MATERIAL CHANGES
4 IN ENVIRONMENTAL REGULATIONS AND REQUIREMENTS THAT OCCUR AFTER THE
5 COMMISSION'S APPROVAL OF AN INTEGRATED RESOURCE PLAN. AN ELECTRIC
6 UTILITY MUST FILE A PLAN REVIEW WITHIN 270 DAYS AFTER THE
7 COMMISSION ORDERS THE UTILITY TO FILE A PLAN REVIEW.

8 SEC. 6T. (1) NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE
9 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL
10 COMMENCE A STUDY IN COLLABORATION WITH REPRESENTATIVES OF EACH
11 CUSTOMER CLASS, UTILITIES WITH 1,000,000 OR MORE RETAIL CUSTOMERS
12 IN THIS STATE, AND OTHER INTERESTED PARTIES TO CONSIDER THE
13 ADOPTION OF PERFORMANCE-BASED REGULATION, UNDER WHICH A UTILITY'S
14 PROFITS WOULD DEPEND ON THE UTILITY ACHIEVING TARGETED POLICY
15 OUTCOMES. THE OVERALL GOAL OF PERFORMANCE-BASED REGULATION IS TO
16 FOSTER GREATER INNOVATION AND INVESTMENT BY THE UTILITY INDUSTRY IN
17 THIS STATE, IN LIGHT OF THE AGING UTILITY INFRASTRUCTURE IN THIS
18 STATE AND DEMANDS ON THE UTILITIES WITH REGARD TO THE ENVIRONMENT
19 AND CLIMATE.

20 (2) IN THE STUDY REQUIRED UNDER THIS SECTION, THE COMMISSION
21 SHALL REVIEW PERFORMANCE-BASED REGULATION SYSTEMS THAT HAVE BEEN
22 IMPLEMENTED IN ANOTHER STATE OR COUNTRY, INCLUDING, BUT NOT LIMITED
23 TO, THE RIIO (REVENUE = INCENTIVES + INNOVATION + OUTPUTS) MODEL
24 UTILIZED IN THE UNITED KINGDOM.

25 (3) A PERFORMANCE-BASED REGULATION SYSTEM SHALL INCLUDE, BUT
26 NOT BE LIMITED TO, THE FOLLOWING FACTORS:

27 (A) A METHOD FOR ESTIMATING THE REVENUE NEEDED BY A UTILITY

1 DURING A MULTI-YEAR PRICING PERIOD, AND A FAIR RETURN, THAT USES
2 FORECASTS OF EFFICIENT TOTAL EXPENDITURES BY THE UTILITY INSTEAD OF
3 DISTINGUISHING BETWEEN OPERATING AND CAPITAL COSTS.

4 (B) AN INCREASE IN THE LENGTH OF TIME BETWEEN RATE CASES, TO
5 PROVIDE UTILITIES WITH MORE OPPORTUNITY TO RETAIN COST SAVINGS
6 WITHOUT THE THREAT OF IMMINENT RATE ADJUSTMENTS, AND TO ENCOURAGE
7 UTILITIES TO MAKE INVESTMENTS THAT HAVE PAYBACK PERIODS LONGER THAN
8 5 YEARS.

9 (C) PERFORMANCE INCENTIVES ESTABLISHED AT THE OUTSET OF A RATE
10 PERIOD THAT PERTAIN TO ISSUES SUCH AS CUSTOMER SATISFACTION,
11 SAFETY, RELIABILITY, CONDITIONS FOR CONNECTION, ENVIRONMENTAL
12 IMPACT, AND SOCIAL OBLIGATIONS. BASED ON A UTILITY'S PERFORMANCE
13 REGARDING THOSE INCENTIVES, A UTILITY MAY RECEIVE FINANCIAL REWARDS
14 OR PENALTIES THAT ADJUST ITS BASE REVENUE.

15 (D) PROFIT-SHARING PROVISIONS THAT CAN SPREAD EFFICIENCY GAINS
16 AMONG CONSUMERS AND UTILITY SHAREHOLDERS AND CAN REDUCE THE DEGREE
17 OF DOWNSIDE RISK ASSOCIATED WITH ATTEMPTS AT INNOVATION.

18 (E) THE USE OF UTILITY-DRAFTED BUSINESS PLANS BASED ON THE
19 FACTORS DESCRIBED IN SUBDIVISIONS (A) TO (D) AND INFORMED BY
20 CONSULTATION WITH ENVIRONMENTAL GROUPS, CONSUMER ADVOCATES,
21 GOVERNMENT OFFICIALS, AND THIRD-PARTY SERVICE PROVIDERS. A BUSINESS
22 PLAN WOULD INCLUDE PROPOSALS FOR BASE REVENUE, VARIOUS OUTCOMES OF
23 INTEREST THAT WILL BE PURSUED, THE METRICS THAT WILL BE USED TO
24 GAUGE THE ACHIEVEMENT OF THOSE OUTCOMES, AND THE METHODS THAT WOULD
25 BE USED TO MANAGE UNCERTAINTY DURING THE EXTENDED PRICE CONTROL
26 PERIOD.

27 (4) NOT LATER THAN 180 DAYS AFTER THE EFFECTIVE DATE OF THE

1 AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSION SHALL REPORT
 2 AND MAKE RECOMMENDATIONS IN WRITING TO THE LEGISLATURE AND GOVERNOR
 3 BASED ON THE RESULT OF THE STUDY CONDUCTED UNDER THIS SECTION.

4 Sec. 10. (1) ~~Sections 10~~ THIS SECTION AND SECTIONS 10A through
 5 10bb shall be known and may be cited as the "~~customer choice and~~
 6 "electricity reliability act".

7 (2) The purpose of sections 10a through 10bb is to do all of
 8 the following:

9 ~~—— (a) To ensure that all retail customers in this state of~~
 10 ~~electric power have a choice of electric suppliers.~~

11 ~~—— (b) To allow and encourage the Michigan public service~~
 12 ~~commission to foster competition in this state in the provision of~~
 13 ~~electric supply and maintain regulation of electric supply for~~
 14 ~~customers who continue to choose supply from incumbent electric~~
 15 ~~utilities.~~

16 ~~—— (c) To encourage the development and construction of merchant~~
 17 ~~plants which will diversify the ownership of electric generation in~~
 18 ~~this state.~~

19 (A) ~~(d)~~ To ensure that all persons in this state are afforded
 20 safe, reliable electric power at a ~~reasonable~~ **COMPETITIVE** rate.

21 (B) ~~(e)~~ To improve the opportunities for economic development
 22 in this state and to promote financially healthy and competitive
 23 utilities in this state.

24 (C) ~~(f)~~ To maintain, foster, and encourage robust, reliable,
 25 and economic generation, distribution, and transmission systems to
 26 provide this state's electric suppliers and generators an
 27 opportunity to access regional sources of generation and wholesale

1 power markets and to ensure a reliable supply of electricity in
2 this state.

3 Sec. 10a. (1) The commission shall issue orders establishing
4 the rates, terms, and conditions of service that allow ~~all~~ retail
5 customers ~~of an electric utility or provider to choose~~ **TO TAKE**
6 **SERVICE FROM** an alternative electric supplier. The orders shall do
7 all of the following:

8 (a) ~~Provide~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
9 **PROVIDE** that no more than 10% of an electric utility's average
10 weather-adjusted retail sales for the preceding calendar year may
11 take service from an alternative electric supplier at any time.

12 (b) Set forth procedures necessary to ~~administer and allocate~~
13 the amount of load that will be allowed to be served by alternative
14 electric suppliers, through the use of annual energy allotments
15 awarded on a calendar year basis. ~~, and shall provide, among other~~
16 ~~things, that existing customers who are taking electric service~~
17 ~~from an alternative electric supplier at a facility on the~~
18 ~~effective date of the amendatory act that added this subdivision~~
19 ~~shall be given an allocated annual energy allotment for that~~
20 ~~service at that facility, that customers seeking to expand usage at~~
21 ~~a facility served through an alternative electric supplier will be~~
22 ~~given next priority, with the remaining available load, if any,~~
23 ~~allocated on a first come first served basis. The procedures shall~~
24 ~~also provide how customer facilities will be defined for the~~
25 ~~purpose of assigning the annual energy allotments to be allocated~~
26 ~~under this section. The commission shall not allocate additional~~
27 ~~annual energy allotments at any time when the total annual energy~~

1 ~~allotments for the utility's distribution service territory is~~
2 ~~greater than 10% of the utility's weather adjusted retail sales in~~
3 ~~the calendar year preceding the date of allocation. THE ANNUAL~~
4 **ENERGY ALLOTMENT AWARDED UNDER THIS SUBDIVISION SHALL BE USED BY**
5 **THE COMMISSION TO DETERMINE THE ELIGIBILITY OF A CUSTOMER TO**
6 **RECEIVE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER UNDER**
7 **SUBDIVISION (D).** If the sales of a utility are less in a subsequent
8 year or if the energy usage of a customer receiving electric
9 service from an alternative electric supplier exceeds its annual
10 energy allotment for that facility, that customer shall not be
11 forced to purchase electricity from a utility, but may purchase
12 electricity from an alternative electric supplier for that facility
13 during that calendar year.

14 ~~—— (c) Notwithstanding any other provision of this section,~~
15 ~~customers seeking to expand usage at a facility that has been~~
16 ~~continuously served through an alternative electric supplier since~~
17 ~~April 1, 2008 shall be permitted to purchase electricity from an~~
18 ~~alternative electric supplier for both the existing and any~~
19 ~~expanded load at that facility as well as any new facility~~
20 ~~constructed or acquired after the effective date of the amendatory~~
21 ~~act that added this subdivision that is similar in nature if the~~
22 ~~customer owns more than 50% of the new facility.~~

23 (C) ~~(d)~~ Notwithstanding any other provision of this section,
24 any customer operating an iron ore mining facility, iron ore
25 processing facility, or both, located in the Upper Peninsula of
26 this state, ~~shall be permitted to~~ **MAY** purchase all or any portion
27 of its electricity from an alternative electric supplier,

1 regardless of whether the sales exceed 10% of the serving electric
2 utility's average weather-adjusted retail sales, IF THE UTILITY
3 AGREES OR IF THAT CUSTOMER AND UTILITY HAVE ENTERED INTO A
4 SETTLEMENT AGREEMENT ALLOWING THE CUSTOMER TO PURCHASE FROM AN
5 ALTERNATIVE ELECTRIC SUPPLIER.

6 (D) PROVIDE THAT A CUSTOMER THAT IS TAKING SERVICE FROM AN
7 ALTERNATIVE ELECTRIC SUPPLIER ON JANUARY 1, 2015 MAY ELECT TO
8 CONTINUE TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER.
9 EXCEPT AS PROVIDED IN SUBDIVISION (E), BEGINNING ON THE EFFECTIVE
10 DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T, ONLY CUSTOMERS
11 WHO ARE TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON
12 JANUARY 1, 2015 ARE ELIGIBLE TO TAKE SERVICE FROM AN ALTERNATIVE
13 ELECTRIC SUPPLIER. NOT LATER THAN DECEMBER 15, 2015, EACH CUSTOMER
14 THAT IS TAKING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER SHALL
15 PROVIDE WRITTEN NOTICE TO THE ELECTRIC UTILITY THAT PROVIDES THAT
16 CUSTOMER WITH DISTRIBUTION SERVICES. THE WRITTEN NOTICE SHALL STATE
17 WHETHER THE CUSTOMER WILL REMAIN WITH AN ALTERNATIVE ELECTRIC
18 SUPPLIER OR WHETHER THAT CUSTOMER INTENDS TO RETURN TO STANDARD
19 TARIFF SERVICE WITH THE ELECTRIC UTILITY UPON THE TERMINATION OF
20 THE CUSTOMER'S ELECTRICITY SUPPLY CONTRACT WITH AN ALTERNATIVE
21 ELECTRIC SUPPLIER. IF A CUSTOMER INTENDS TO RETURN TO STANDARD
22 TARIFF SERVICE, THE CUSTOMER SHALL INCLUDE WITH THE NOTICE THE DATE
23 THAT THE CUSTOMER INTENDS TO RETURN TO STANDARD TARIFF SERVICE.

24 (E) PROVIDE THAT A CUSTOMER ON A LIST AWAITING RETAIL OPEN
25 ACCESS SERVICE ON JANUARY 1, 2015 MAY ELECT TO CONTINUE TO REMAIN
26 ON THE LIST TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER
27 IF THAT SERVICE BECOMES AVAILABLE. NOT LATER THAN DECEMBER 15,

1 2015, EACH CUSTOMER QUALIFIED TO RECEIVE SERVICE UNDER THIS
2 SUBDIVISION SHALL PROVIDE WRITTEN NOTICE TO THE ELECTRIC UTILITY
3 THAT PROVIDES THAT CUSTOMER WITH DISTRIBUTION SERVICES. THE WRITTEN
4 NOTICE SHALL STATE WHETHER THE CUSTOMER WILL REMAIN ON THE LIST OF
5 CUSTOMERS QUALIFIED TO RECEIVE RETAIL OPEN ACCESS SERVICE.

6 (F) REQUIRE EACH UTILITY TO FILE WITH THE COMMISSION NO LATER
7 THAN JANUARY 15, 2016 A LIST OF ALL CUSTOMERS THAT HAVE MADE AN
8 ELECTION TO BE ELIGIBLE FOR RETAIL OPEN ACCESS SERVICE UNDER
9 SUBDIVISION (D) OR (E). THE FILING MUST INCLUDE THE ESTIMATED
10 AMOUNT OF ELECTRICITY USED BY EACH CUSTOMER.

11 (G) PROVIDE THAT CUSTOMERS SEEKING TO EXPAND USAGE AT A
12 FACILITY THAT IS SERVED BY AN ALTERNATIVE ELECTRIC SUPPLIER MAY
13 PURCHASE ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER FOR BOTH
14 THE EXISTING AND ANY EXPANDED LOAD AT THAT FACILITY AS WELL AS ANY
15 NEW FACILITY CONSTRUCTED OR ACQUIRED AFTER THE EFFECTIVE DATE OF
16 THE AMENDATORY ACT THAT ADDED SECTION 6T THAT IS SIMILAR IN NATURE
17 IF THE CUSTOMER OWNS MORE THAN 50% OF THE NEW FACILITY, REGARDLESS
18 OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S
19 AVERAGE WEATHER-ADJUSTED RETAIL SALES.

20 (H) PROVIDE THAT A CUSTOMER RECEIVING SERVICE FROM AN
21 ALTERNATIVE ELECTRIC SUPPLIER MAY SUBSEQUENTLY PROVIDE NOTICE TO
22 THE ELECTRIC UTILITY OF THE CUSTOMER'S DESIRE TO RECEIVE STANDARD
23 TARIFF SERVICE FROM THE ELECTRIC UTILITY. IF A CUSTOMER THAT WAS
24 RECEIVING SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER ON THE
25 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 6T
26 SUBSEQUENTLY ELECTS TO RETURN TO ELECTRIC SUPPLY SERVICE FROM THE
27 ELECTRIC UTILITY, THAT CUSTOMER IS NO LONGER ELIGIBLE TO RECEIVE

1 ELECTRIC SUPPLY SERVICE FROM AN ALTERNATIVE ELECTRIC SUPPLIER. A
2 CUSTOMER THAT ELECTS TO CONTINUE TO RECEIVE ELECTRIC SUPPLY SERVICE
3 FROM AN ALTERNATIVE ELECTRIC SUPPLIER AFTER PROVIDING A UTILITY THE
4 NOTICE REQUIRED UNDER SUBDIVISION (D) MAY RETURN TO STANDARD TARIFF
5 SERVICE FROM AN ELECTRIC UTILITY IF THEY PROVIDE THE ELECTRIC
6 UTILITY 3 YEARS' ADVANCE WRITTEN NOTICE OF THE INTENT TO RETURN TO
7 STANDARD TARIFF SERVICE. A NOTICE OF THE INTENT TO RETURN TO
8 STANDARD TARIFF SERVICE UNDER THIS SUBDIVISION IS IRREVOCABLE. THE
9 ELECTRIC UTILITY MAY WAIVE ANY OR PART OF THIS NOTICE REQUIREMENT
10 FOR ANY CUSTOMER RETURNING TO STANDARD TARIFF SERVICE. IF A
11 CUSTOMER RETURNS TO THE UTILITY FOR ELECTRIC SUPPLY SERVICE WITHOUT
12 PROVIDING 3 YEARS' ADVANCE NOTICE, ANY INCREMENTAL COSTS, INCLUDING
13 BUT NOT LIMITED TO, CAPACITY, ENERGY, ANCILLARY SERVICES,
14 DISTRIBUTION SERVICE, AND TRANSMISSION SERVICE, ASSOCIATED WITH THE
15 RETURN OF THE CUSTOMER SHALL NOT BE BORNE BY ANY OTHER CUSTOMER OF
16 THE ELECTRIC UTILITY OR BY THE ELECTRIC UTILITY. IF THE RETURN OF A
17 CUSTOMER THAT DID NOT PROVIDE 3 YEARS' ADVANCE NOTICE TO THE
18 ELECTRIC UTILITY CREATES ADDITIONAL COSTS OR IMPAIRS RELIABILITY,
19 THE COMMISSION MAY ESTABLISH TARIFF PROVISIONS OR OTHER TERMS AND
20 CONDITIONS TO ASSIGN THOSE COSTS OR IMPAIRMENTS OF RELIABILITY TO
21 THE RETURNING CUSTOMER.

22 (I) PROVIDE THAT IF THE CUSTOMER NEXT ON THE LIST AWAITING
23 RETAIL OPEN ACCESS SERVICE IS NOTIFIED THAT LESS THAN 10% OF AN
24 ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE
25 PRECEDING CALENDAR YEAR IS TAKING SERVICE FROM AN ALTERNATIVE
26 ELECTRIC SUPPLIER, THE CUSTOMER MAY PURCHASE ALL OR ANY PORTION OF
27 ITS ELECTRICITY FROM AN ALTERNATIVE ELECTRIC SUPPLIER, REGARDLESS

1 OF WHETHER THE SALES EXCEED 10% OF THE SERVING ELECTRIC UTILITY'S
2 AVERAGE WEATHER-ADJUSTED RETAIL SALES. THE ORDERS SHALL ALSO
3 PROVIDE THAT IF THE CUSTOMER NEXT ON THE LIST AWAITING RETAIL OPEN
4 ACCESS SERVICE REFUSES TO TAKE SERVICE FROM AN ALTERNATIVE ELECTRIC
5 SUPPLIER WITHIN 7 DAYS AFTER BEING NOTIFIED THAT LESS THAN 10% OF
6 AN ELECTRIC UTILITY'S AVERAGE WEATHER-ADJUSTED RETAIL SALES FOR THE
7 PRECEDING CALENDAR YEAR IS TAKING SERVICE FROM AN ALTERNATIVE
8 ELECTRIC SUPPLIER, THAT CUSTOMER WILL BE REMOVED FROM THE LIST AND
9 IS NOT ELIGIBLE TO RECEIVE ELECTRIC GENERATION SERVICE FROM AN
10 ALTERNATIVE ELECTRIC SUPPLIER.

11 (J) PROVIDE THAT AN ELECTRIC UTILITY HAS NO DUTY TO PROVIDE
12 GENERATION RESOURCE ADEQUACY FOR CUSTOMERS RECEIVING SERVICE FROM
13 AN ALTERNATIVE ELECTRIC SUPPLIER UNDER THIS SECTION.

14 (2) The commission shall issue orders establishing a licensing
15 procedure for all alternative electric suppliers. To ensure
16 adequate service to customers in this state, the commission shall
17 require that an alternative electric supplier maintain an office
18 within this state, shall assure that an alternative electric
19 supplier has the necessary financial, managerial, and technical
20 capabilities, **SHALL REQUIRE THAT AN ALTERNATIVE ELECTRIC SUPPLIER**
21 **FILES ALL OF ITS ELECTRICITY SUPPLY CONTRACTS WITH THE COMMISSION,**
22 **THE PRICE TERMS OF WHICH MAY BE FILED UNDER SEAL,** shall require
23 that an alternative electric supplier maintain records ~~which~~**THAT**
24 the commission considers necessary, and shall ensure an alternative
25 electric supplier's accessibility to the commission, to consumers,
26 and to electric utilities in this state. The commission also shall
27 require alternative electric suppliers to agree that they will

1 collect and remit to local units of government all applicable
2 users, sales, and use taxes. An alternative electric supplier is
3 not required to obtain any certificate, license, or authorization
4 from the commission other than as required by this act.

5 (3) AS A CONDITION OF LICENSURE, EXCEPT AS PROVIDED UNDER
6 SUBSECTION (4), AN ALTERNATIVE ELECTRIC SUPPLIER SHALL BY NOVEMBER
7 1 OF EACH YEAR DEMONSTRATE TO THE COMMISSION, IN A FORMAT
8 DETERMINED BY THE COMMISSION, THAT IT WILL BE ABLE TO SUPPLY ENOUGH
9 DEDICATED, FIRM, AND PHYSICAL ELECTRIC GENERATING CAPACITY TO SERVE
10 ITS RETAIL ELECTRIC CUSTOMERS' TOTAL CURRENT PEAK DEMAND INCLUDING
11 A REASONABLE PROJECTION OF TOTAL PEAK DEMAND GROWTH, PLUS THE
12 APPLICABLE PLANNING RESERVE MARGIN REQUIREMENTS, FOR THE SUBSEQUENT
13 3 YEARS OR THE TERM OF ANY CONTRACT, WHICHEVER IS LONGER.

14 (4) IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR, WHERE THE
15 ALTERNATIVE ELECTRIC SUPPLIER'S DEMAND IS SERVED, ISSUES A RESOURCE
16 ADEQUACY FORECAST OR SIMILAR CAPACITY ASSESSMENT REPORT THAT
17 PROJECTS A CAPACITY SHORTFALL WITHIN THE SUBSEQUENT 2-YEAR PERIOD,
18 AN ALTERNATIVE ELECTRIC SUPPLIER SHALL DEMONSTRATE TO THE
19 COMMISSION BY NOVEMBER 1 OF THE YEAR IN WHICH THE REPORT IS ISSUED,
20 IN A FORMAT DETERMINED BY THE COMMISSION, THAT IT WILL BE ABLE TO
21 SUPPLY ENOUGH DEDICATED, FIRM, AND PHYSICAL ELECTRIC GENERATING
22 CAPACITY TO SERVE ITS RETAIL ELECTRIC CUSTOMERS' TOTAL CURRENT PEAK
23 DEMAND INCLUDING A REASONABLE PROJECTION OF TOTAL PEAK DEMAND
24 GROWTH, PLUS THE APPLICABLE PLANNING RESERVE MARGIN REQUIREMENTS
25 FOR THE SUBSEQUENT 5 YEARS OR THE TERM OF ANY CONTRACT, WHICHEVER
26 IS LONGER. IF THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR HAS NOT
27 ISSUED A RESOURCE ADEQUACY FORECAST OR SIMILAR CAPACITY ASSESSMENT

1 REPORT FOR AT LEAST THE SUBSEQUENT 2-YEAR PERIOD, THE COMMISSION
2 SHALL MAKE A FORMAL REQUEST TO THE APPROPRIATE INDEPENDENT SYSTEM
3 OPERATOR TO ISSUE A RESOURCE ADEQUACY FORECAST OR SIMILAR CAPACITY
4 ASSESSMENT REPORT.

5 (5) IN DETERMINING WHETHER AN ALTERNATIVE ELECTRIC SUPPLIER
6 HAS DEMONSTRATED ADEQUATE DEDICATED, FIRM, AND PHYSICAL ELECTRIC
7 GENERATING CAPACITY TO MEET THE REQUIREMENTS OF SUBSECTIONS (3) AND
8 (4), THE COMMISSION SHALL ONLY CONSIDER THE FOLLOWING:

9 (A) CAPACITY THAT IS PHYSICALLY LOCATED IN OR DELIVERABLE TO
10 THE RESOURCE ADEQUACY ZONE, AS DEFINED BY THE APPROPRIATE
11 INDEPENDENT SYSTEM OPERATOR, WHERE THE ALTERNATIVE ELECTRIC
12 SUPPLIER'S DEMAND IS SERVED IN THIS STATE.

13 (B) IF THE ALTERNATIVE ELECTRIC SUPPLIER RELIES ON POWER
14 PURCHASE CONTRACTS FOR ANY PORTION OF ITS DEMONSTRATION OF CAPACITY
15 SUPPLY UNDER SUBSECTIONS (3) AND (4), THAT THE POWER PURCHASE
16 CONTRACTS ARE PREPAID FOR THE PERIODS REQUIRED UNDER SUBSECTIONS
17 (3) AND (4).

18 (C) IF THE ALTERNATIVE ELECTRIC SUPPLIER RELIES ON CAPACITY
19 THAT IS THE RESULT OF A WHOLESALE MARKET AUCTION FOR ANY PORTION OF
20 ITS DEMONSTRATION OF CAPACITY SUPPLY UNDER SUBSECTIONS (3) AND (4),
21 THAT THE MARKET AUCTION PURCHASES SHALL NOT EXCEED 5% OF THE
22 ALTERNATIVE ELECTRIC SUPPLIER'S CAPACITY REQUIREMENTS UNDER
23 SUBSECTIONS (3) AND (4).

24 (D) IF THE ALTERNATIVE ELECTRIC SUPPLIER'S CAPACITY PURCHASES
25 UNDER SUBDIVISION (B) OR (C) REQUIRE THE CAPACITY TO BE TRANSPORTED
26 INTO THIS STATE, THAT THE ALTERNATIVE ELECTRIC SUPPLIER HAS THE
27 CONTRACTED TRANSMISSION CAPACITY TO IMPORT THAT CAPACITY INTO THE

1 RESOURCE ADEQUACY ZONE, AS DEFINED BY THE APPROPRIATE INDEPENDENT
2 SYSTEM OPERATOR, WHERE THE ALTERNATIVE ELECTRIC SUPPLIER'S DEMAND
3 IS SERVED IN THIS STATE.

4 (6) IF AN ALTERNATIVE ELECTRIC SUPPLIER IS UNABLE TO
5 DEMONSTRATE TO THE COMMISSION THAT IT HAS PROCURED THE DEDICATED,
6 FIRM, AND PHYSICAL CAPACITY UNDER THE REQUIREMENTS OF SUBSECTIONS
7 (3), (4), AND (5), THE COMMISSION SHALL NOTIFY THE ALTERNATIVE
8 ELECTRIC SUPPLIER IN WRITING THAT THE ALTERNATIVE ELECTRIC SUPPLIER
9 HAS 60 DAYS TO REMEDY ANY DEFECTS IDENTIFIED BY THE COMMISSION. IF
10 THE ALTERNATIVE ELECTRIC SUPPLIER FAILS TO REMEDY THE DEFECTS
11 IDENTIFIED BY THE COMMISSION WITHIN 60 DAYS, THE COMMISSION SHALL
12 REVOKE THE ALTERNATIVE ELECTRIC SUPPLIER'S LICENSE TO SUPPLY
13 ELECTRICITY AND BAR THAT ALTERNATIVE ELECTRIC SUPPLIER FROM
14 PROVIDING ELECTRICITY SUPPLY IN THIS STATE FOR A 3-YEAR PERIOD.

15 (7) THE COMMISSION'S CONSIDERATION OF AN ALTERNATIVE ELECTRIC
16 SUPPLIER'S ANNUAL DEMONSTRATION OF CAPACITY REQUIRED SHALL BE
17 PERFORMED UNDER A CONTESTED CASE PROCEEDING UNDER CHAPTER 4 OF THE
18 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.271 TO
19 24.287.

20 (8) THE COMMISSION SHALL ESTABLISH PLANNING RESERVE MARGIN
21 REQUIREMENTS UNDER SUBSECTIONS (3) AND (4) FOR ALL CUSTOMER
22 ELECTRIC LOADS SERVED BY ALTERNATIVE ELECTRIC SUPPLIERS IN THIS
23 STATE. THE PLANNING RESERVE MARGIN REQUIREMENTS SHALL BE BASED ON
24 RECENT ACTUAL LEVELS OF PEAK DEMAND PLUS A REASONABLE PROJECTION OF
25 5-YEAR PEAK DEMAND GROWTH, AND SHALL BE DESIGNED TO ENSURE THAT THE
26 RISK OF AN OUTAGE IN THIS STATE DUE TO LACK OF ELECTRICITY SUPPLY
27 IS NO MORE LIKELY THAN ONCE EVERY 10 YEARS. THE PLANNING RESERVE

1 MARGIN REQUIREMENT MAY TAKE INTO ACCOUNT CUSTOMER DEMAND RESPONSE
2 MEASURES ONLY IF THE COMMISSION DETERMINES THAT THE DEMAND RESPONSE
3 MEASURES ARE AS RELIABLE AS FIRM, PHYSICAL GENERATING CAPACITY. THE
4 COMMISSION MAY ELECT TO USE THE PLANNING RESERVE MARGIN REQUIREMENT
5 SET BY THE APPROPRIATE INDEPENDENT SYSTEM OPERATOR.

6 (9) ~~(3)~~—The commission shall issue orders to ensure that
7 customers in this state are not switched to another supplier or
8 billed for any services without the customer's consent.

9 (10) ~~(4) No later than December 2, 2000, the~~ ~~THE~~ commission
10 shall establish a code of conduct that ~~shall apply~~ **APPLIES** to all
11 electric utilities. The code of conduct shall include, but is not
12 limited to, measures to prevent cross-subsidization, information
13 sharing, and preferential treatment, between a ~~an~~ **ELECTRIC**
14 utility's regulated **ELECTRIC SERVICES** and unregulated **RETAIL OPEN**
15 **ACCESS** services, whether those services are provided by the utility
16 or the utility's affiliated entities. The code of conduct
17 ~~established under this subsection shall also be~~ **IS** applicable to
18 electric utilities and alternative electric suppliers consistent
19 with section 10, this section, and sections 10b through 10cc.

20 (11) ~~(5)~~—An electric utility may offer its customers an
21 appliance service program **AND OTHER VALUE ADDED PROGRAMS AND**
22 **SERVICES**. ~~Except as otherwise provided by this section, the utility~~
23 ~~shall comply with the code of conduct established by the commission~~
24 ~~under subsection (4). As used in this section, "appliance service~~
25 ~~program" or "program" means a subscription program for the repair~~
26 ~~and servicing of heating and cooling systems or other appliances.~~

27 (12) ~~(6)~~—A utility offering a program under subsection ~~(5)~~

1 (11) shall do all of the following:

2 (a) Locate within a separate department of the utility or
3 affiliate within the utility's corporate structure the personnel
4 responsible for the day-to-day management of the program.

5 (b) Maintain separate books and records for the program,
6 access to which shall be made available to the commission upon
7 request.

8 (c) Not promote or market the program through the use of
9 utility billing inserts, printed messages on the utility's billing
10 materials, or other promotional materials included with customers'
11 utility bills.

12 (13) ~~(7)~~All costs directly attributable to an ~~appliance~~
13 ~~service~~ **A** program allowed under subsection ~~(5)~~ **(16)** shall be
14 allocated to the program as required by this subsection. The direct
15 and indirect costs of employees, vehicles, equipment, office space,
16 and other facilities used in the ~~appliance service~~ program shall be
17 allocated to the program based upon the amount of use by the
18 program as compared to the total use of the employees, vehicles,
19 equipment, office space, and other facilities. The cost of the
20 program shall include administrative and general expense loading to
21 be determined in the same manner as the utility determines
22 administrative and general expense loading for all of the utility's
23 regulated and unregulated activities. A subsidy by a utility does
24 not exist if costs allocated as required by this subsection do not
25 exceed the revenue of the program.

26 (14) ~~(8)~~A utility may include charges for its ~~appliance~~
27 ~~service program~~ **PROGRAMS OFFERED UNDER SUBSECTION (11)** on its

1 monthly billings to its customers if the utility complies with all
2 of the following requirements:

3 (a) All costs associated with the billing process, including
4 the postage, envelopes, paper, and printing expenses, are allocated
5 as required under subsection ~~(7)~~-(13).

6 (b) A customer's regulated utility service is not terminated
7 for nonpayment of the ~~appliance service program portion~~ **PORCTIONS** of
8 the bill.

9 (c) Unless the customer directs otherwise in writing, a
10 partial payment by a customer is applied first to the bill for
11 regulated service.

12 (15) ~~(9)~~-In marketing ~~its appliance service~~ **A** program **OFFERED**
13 **UNDER SUBSECTION (11)** to the public, a utility shall do all of the
14 following:

15 (a) The list of customers receiving regulated service from the
16 utility shall be available to a provider of ~~appliance repair~~
17 ~~service~~ **THE PROGRAM** upon request within 2 business days. The
18 customer list shall be provided in the same electronic format as
19 ~~such~~ **THAT** information is provided to the ~~appliance service~~ program.
20 A new customer shall be added to the customer list within 1
21 business day of the date the customer requested to turn on service.

22 (b) Appropriately allocate costs as required under subsection
23 ~~(7)~~-(13) when personnel employed at a utility's call center provide
24 ~~appliance service program~~ marketing information to a prospective
25 customer.

26 (c) ~~Prior to~~ **BEFORE** enrolling a customer into the program, the
27 utility shall inform the potential customer of all of the

1 following:

2 (i) That ~~appliance service~~ programs may be available from
3 another provider.

4 (ii) That the ~~appliance service~~ program is not regulated by
5 the commission.

6 (iii) That a new customer ~~shall have~~ **HAS** 10 days after
7 enrollment to cancel his or her appliance service program contract
8 without penalty. **THIS CANCELLATION PERIOD DOES NOT APPLY TO A**
9 **UTILITY'S OTHER VALUE ADDED PROGRAMS AND SERVICES OFFERED UNDER**
10 **SUBSECTION (11).**

11 (iv) That the customer's regulated rates and conditions of
12 service provided by the utility are not affected by enrollment in
13 the program or by the decision of the customer to use the services
14 of another provider of ~~appliance repair service.~~ **A PROGRAM.**

15 (d) The utility name and logo may be used to market the
16 ~~appliance service~~ program ~~provided that~~ **IF** the program is not
17 marketed in conjunction with a regulated service. ~~To the extent~~
18 ~~that~~ **IF** a program utilizes the utility's name and logo in marketing
19 the program, the program shall include language on all material
20 indicating that the program is not regulated by the commission.
21 Costs shall not be allocated to the program for the use of the
22 utility's name or logo.

23 (16) ~~(10) This section does not prohibit the commission from~~
24 ~~requiring a utility~~ **THE COMMISSION IS NOT REQUIRED** to include
25 revenues from ~~an appliance service~~ **A** program in establishing base
26 rates. If the commission includes the revenues of ~~an appliance~~
27 ~~service~~ **A** program in determining a utility's base rates, the

1 commission shall also include all of the costs of the program as
2 determined under this section. **THE COMMISSION MAY PERMIT A UTILITY**
3 **TO RETAIN PROFITS GENERATED BY A PROGRAM, AND THE UTILITY MAY USE A**
4 **PORTION OF THE REVENUES FROM A PROGRAM TO INVEST IN BUSINESS**
5 **DEVELOPMENT OF NEW PROGRAMS AND SERVICES.**

6 ~~—— (11) Except as otherwise provided in this section, the code of~~
7 ~~conduct with respect to an appliance service program shall not~~
8 ~~require a utility to form a separate affiliate or division to~~
9 ~~operate an appliance service program, impose further restrictions~~
10 ~~on the sharing of employees, vehicles, equipment, office space, and~~
11 ~~other facilities, or require the utility to provide other providers~~
12 ~~of appliance repair service with access to utility employees,~~
13 ~~vehicles, equipment, office space, or other facilities.~~

14 (17) ~~(12)~~ This act does not prohibit or limit the right of a
15 person to obtain self-service power and does not impose a
16 transition, implementation, exit fee, or any other similar charge
17 on self-service power. A person using self-service power is not an
18 electric supplier, electric utility, or a person conducting an
19 electric utility business. As used in this subsection, "self-
20 service power" means any of the following:

21 (a) Electricity generated and consumed at an industrial site
22 or contiguous industrial site or single commercial establishment or
23 single residence without the use of an electric utility's
24 transmission and distribution system.

25 (b) Electricity generated primarily by the use of by-product
26 fuels, including waste water solids, which electricity is consumed
27 as part of a contiguous facility, with the use of an electric

1 utility's transmission and distribution system, but only if the
2 point or points of receipt of the power within the facility are not
3 greater than 3 miles distant from the point of generation.

4 (c) A site or facility with load existing on June 5, 2000 that
5 is divided by an inland body of water or by a public highway, road,
6 or street but that otherwise meets this definition meets the
7 contiguous requirement of this subdivision regardless of whether
8 self-service power was being generated on June 5, 2000.

9 (d) A commercial or industrial facility or single residence
10 that meets the requirements of subdivision (a) or (b) meets this
11 definition whether or not the generation facility is owned by an
12 entity different from the owner of the commercial or industrial
13 site or single residence.

14 (18) ~~(13)~~—This act does not prohibit or limit the right of a
15 person to engage in affiliate wheeling and does not impose a
16 transition, implementation, exit fee, or any other similar charge
17 on a person engaged in affiliate wheeling. ~~As used in this section:~~

18 ~~—— (a) "Affiliate" means a person or entity that directly, or~~
19 ~~indirectly through 1 or more intermediates, controls, is controlled~~
20 ~~by, or is under common control with another specified entity. As~~
21 ~~used in this subdivision, "control" means, whether through an~~
22 ~~ownership, beneficial, contractual, or equitable interest, the~~
23 ~~possession, directly or indirectly, of the power to direct or to~~
24 ~~cause the direction of the management or policies of a person or~~
25 ~~entity or the ownership of at least 7% of an entity either directly~~
26 ~~or indirectly.~~

27 ~~—— (b) "Affiliate wheeling" means a person's use of direct access~~

1 ~~service where an electric utility delivers electricity generated at~~
2 ~~a person's industrial site to that person or that person's~~
3 ~~affiliate at a location, or general aggregated locations, within~~
4 ~~this state that was either 1 of the following:~~

5 ~~—— (i) For at least 90 days during the period from January 1,~~
6 ~~1996 to October 1, 1999, supplied by self-service power, but only~~
7 ~~to the extent of the capacity reserved or load served by self-~~
8 ~~service power during the period.~~

9 ~~—— (ii) Capable of being supplied by a person's cogeneration~~
10 ~~capacity within this state that has had since January 1, 1996 a~~
11 ~~rated capacity of 15 megawatts or less, was placed in service~~
12 ~~before December 31, 1975, and has been in continuous service since~~
13 ~~that date. A person engaging in affiliate wheeling is not an~~
14 ~~electric supplier, an electric utility, or conducting an electric~~
15 ~~utility business when a person engages in affiliate wheeling.~~

16 (19) ~~(14)~~ The rights of parties to existing contracts and
17 agreements in effect as of January 1, 2000 between electric
18 utilities and qualifying facilities, including the right to have
19 the charges recovered from the customers of an electric utility, or
20 its successor, ~~shall~~ **ARE** not ~~be~~ abrogated, increased, or diminished
21 by this act, nor shall the receipt of any proceeds of the
22 securitization bonds by an electric utility be a basis for any
23 regulatory disallowance. Further, any securitization or financing
24 order issued by the commission that relates to a qualifying
25 facility's power purchase contract shall fully consider that
26 qualifying facility's legal and financial interests.

27 ~~—— (15) A customer who elects to receive service from an~~

1 ~~alternative electric supplier may subsequently provide notice to~~
2 ~~the electric utility of the customer's desire to receive standard~~
3 ~~tariff service from the electric utility. The procedures in place~~
4 ~~for each electric utility as of January 1, 2008 that set forth the~~
5 ~~terms pursuant to which a customer receiving service from an~~
6 ~~alternative electric supplier may return to full service from the~~
7 ~~electric utility are ratified and shall remain in effect and may be~~
8 ~~amended by the commission as needed. If an electric utility did not~~
9 ~~have the procedures in place as of January 1, 2008, the commission~~
10 ~~shall adopt those procedures.~~

11 (20) ~~(16)~~—The commission shall authorize rates that will
12 ensure that an electric utility that offered retail open access
13 service from 2002 through ~~the effective date of the amendatory act~~
14 ~~that added this subsection~~ **OCTOBER 6, 2008** fully recovers its
15 restructuring costs and any associated accrued regulatory assets.
16 This includes, but is not limited to, implementation costs,
17 stranded costs, and costs authorized ~~pursuant to~~ **UNDER** section
18 10d(4) as it existed ~~prior to the effective date of the amendatory~~
19 ~~act that added this subsection,~~ **BEFORE OCTOBER 6, 2008**, that have
20 been authorized for recovery by the commission in orders issued
21 ~~prior to the effective date of the amendatory act that added this~~
22 ~~subsection.~~ **BEFORE OCTOBER 6, 2008**. The commission shall approve
23 surcharges that will ensure full recovery of all such costs ~~within~~
24 ~~5 years of the effective date of the amendatory act that added this~~
25 ~~subsection.~~ **BY OCTOBER 6, 2013**.

26 ~~—— (17) As used in subsections (1) and (15):~~

27 ~~—— (a) "Customer" means the building or facilities served through~~

1 ~~a single existing electric billing meter and does not mean the~~
2 ~~person, corporation, partnership, association, governmental body,~~
3 ~~or other entity owning or having possession of the building or~~
4 ~~facilities.~~

5 ~~—— (b) "Standard tariff service" means, for each regulated~~
6 ~~electric utility, the retail rates, terms, and conditions of~~
7 ~~service approved by the commission for service to customers who do~~
8 ~~not elect to receive generation service from alternative electric~~
9 ~~suppliers.~~

10 (21) AS USED IN THIS SECTION:

11 (A) "AFFILIATE" MEANS A PERSON OR ENTITY THAT DIRECTLY, OR
12 INDIRECTLY THROUGH 1 OR MORE INTERMEDIATES, CONTROLS, IS CONTROLLED
13 BY, OR IS UNDER COMMON CONTROL WITH ANOTHER SPECIFIED ENTITY. AS
14 USED IN THIS SUBDIVISION, "CONTROL" MEANS, WHETHER THROUGH AN
15 OWNERSHIP, BENEFICIAL, CONTRACTUAL, OR EQUITABLE INTEREST, THE
16 POSSESSION, DIRECTLY OR INDIRECTLY, OF THE POWER TO DIRECT OR TO
17 CAUSE THE DIRECTION OF THE MANAGEMENT OR POLICIES OF A PERSON OR
18 ENTITY OR THE OWNERSHIP OF AT LEAST 7% OF AN ENTITY EITHER DIRECTLY
19 OR INDIRECTLY.

20 (B) "AFFILIATE WHEELING" MEANS A PERSON'S USE OF DIRECT ACCESS
21 SERVICE WHERE AN ELECTRIC UTILITY DELIVERS ELECTRICITY GENERATED AT
22 A PERSON'S INDUSTRIAL SITE TO THAT PERSON OR THAT PERSON'S
23 AFFILIATE AT A LOCATION, OR GENERAL AGGREGATED LOCATIONS, WITHIN
24 THIS STATE THAT WAS EITHER 1 OF THE FOLLOWING:

25 (i) FOR AT LEAST 90 DAYS DURING THE PERIOD FROM JANUARY 1,
26 1996 TO OCTOBER 1, 1999, SUPPLIED BY SELF-SERVICE POWER, BUT ONLY
27 TO THE EXTENT OF THE CAPACITY RESERVED OR LOAD SERVED BY SELF-

1 SERVICE POWER DURING THE PERIOD.

2 (ii) CAPABLE OF BEING SUPPLIED BY A PERSON'S COGENERATION
3 CAPACITY WITHIN THIS STATE THAT HAS HAD SINCE JANUARY 1, 1996 A
4 RATED CAPACITY OF 15 MEGAWATTS OR LESS, WAS PLACED IN SERVICE
5 BEFORE DECEMBER 31, 1975, AND HAS BEEN IN CONTINUOUS SERVICE SINCE
6 THAT DATE. A PERSON ENGAGING IN AFFILIATE WHEELING IS NOT AN
7 ELECTRIC SUPPLIER, AN ELECTRIC UTILITY, OR CONDUCTING AN ELECTRIC
8 UTILITY BUSINESS WHEN A PERSON ENGAGES IN AFFILIATE WHEELING.

9 (C) "APPLIANCE SERVICE PROGRAM" MEANS A SUBSCRIPTION PROGRAM
10 FOR THE REPAIR AND SERVICING OF HEATING AND COOLING SYSTEMS OR
11 OTHER APPLIANCES.

12 (D) "CUSTOMER" MEANS THE BUILDING OR FACILITIES SERVED THROUGH
13 A SINGLE EXISTING ELECTRIC BILLING METER AND DOES NOT MEAN THE
14 PERSON, CORPORATION, PARTNERSHIP, ASSOCIATION, GOVERNMENTAL BODY,
15 OR OTHER ENTITY OWNING OR HAVING POSSESSION OF THE BUILDING OR
16 FACILITIES.

17 (E) "PROGRAM" MEANS AN APPLIANCE SERVICE PROGRAM OR OTHER
18 VALUE ADDED PROGRAMS AND SERVICES, OR BOTH.

19 (F) "STANDARD TARIFF SERVICE" MEANS, FOR EACH REGULATED
20 ELECTRIC UTILITY, THE RETAIL RATES, TERMS, AND CONDITIONS OF
21 SERVICE APPROVED BY THE COMMISSION FOR SERVICE TO CUSTOMERS THAT DO
22 NOT ELECT TO RECEIVE GENERATION SERVICE FROM ALTERNATIVE ELECTRIC
23 SUPPLIERS.

24 Sec. 10f. (1) If, ~~After~~**AFTER** subtracting the average demand
25 for each retail customer under contract that exceeds 15% of the
26 utility's retail load in the relevant market, an electric utility
27 has commercial control over more than 30% of the generating

1 capacity available to serve a relevant market, the utility shall do
2 1 or more of the following with respect to any generation in excess
3 of that required to serve its firm retail sales load, including a
4 reasonable reserve margin:

5 (a) Divest a portion of its generating capacity.

6 (b) Sell generating capacity under a contract with a nonretail
7 purchaser for a term of at least 5 years.

8 (c) Transfer generating capacity to an independent brokering
9 trustee for a term of at least 5 years in blocks of at least 500
10 megawatts, 24 hours per day.

11 (2) The total generating capacity available to serve the
12 relevant market shall be determined by the commission and shall
13 equal the sum of the firm available transmission capability into
14 the relevant market and the aggregate generating capacity located
15 within the relevant market, less 1 or more of the following:

16 (a) If a municipal utility does not permit its retail
17 customers to select alternative electric suppliers, the generating
18 capacity owned by a municipal utility necessary to serve the retail
19 native load.

20 (b) Generating capacity dedicated to serving on-site load.

21 (c) The generating capacity of any multistate electric
22 supplier jurisdictionally assigned to customers of other states.

23 (3) Within 30 days after a commission determination of the
24 total generating capacity under subsection (2) in a relevant
25 market, an electric utility that exceeds the 30% limit shall file
26 an application with the commission for approval of a market power
27 mitigation plan. The commission shall approve the plan if it is

1 consistent with this act or require modifications to the plan to
2 make it consistent with this act. The utility ~~shall retain~~ **RETAINS**
3 the right to determine what specific actions to take to achieve
4 compliance with this section.

5 (4) An independent brokering trustee shall be completely
6 independent from and have no affiliation with the utility. The
7 terms of any transfer of generating capacity shall ensure that the
8 trustee has complete control over the marketing, pricing, and terms
9 of the transferred capacity for at least 5 years and shall provide
10 appropriate performance incentives to the trustee for marketing the
11 transferred capacity.

12 (5) Upon application to the commission by the utility, the
13 commission may issue an order approving a change in trustees during
14 the 5-year term upon a showing that a trustee has failed to market
15 the transferred generating capacity in a prudent and experienced
16 manner.

17 ~~—— (6) Within 1 year of the effective date of the amendatory act~~
18 ~~that added this section, the commission shall issue a report to the~~
19 ~~governor and the legislature that analyzes all aspects relating to~~
20 ~~market power in the Upper Peninsula of this state. The report shall~~
21 ~~include, but not be limited to, concentration of generating~~
22 ~~capacity, control of the transmission system, restrictions on the~~
23 ~~delivery of power, ability of new suppliers to enter the market,~~
24 ~~and identification of any market power problems under the existing~~
25 ~~market power test. Prior to issuing its report, the commission~~
26 ~~shall receive written comments and hold hearings to solicit public~~
27 ~~input.~~

1 Sec. 10p. (1) Each electric utility operating in this state
2 shall establish an industry worker transition program that shall,
3 in consultation with employees or applicable collective bargaining
4 representatives, provide skills upgrades, apprenticeship and
5 training programs, voluntary separation packages consistent with
6 reasonable business practices, and job banks to coordinate and
7 assist placement of employees into comparable employment at no less
8 than the wage rates and substantially equivalent fringe benefits
9 received before the transition.

10 (2) The costs resulting from subsection (1) ~~shall include~~
11 audited and verified employee-related restructuring costs that are
12 incurred as a result of ~~the amendatory act that added this section~~
13 **2000 PA 141** or as a result of prior commission restructuring
14 orders, including employee severance costs, employee retraining
15 programs, early retirement programs, outplacement programs, and
16 similar costs and programs, that have been approved and found to be
17 prudently incurred by the commission.

18 (3) In the event of a sale, purchase, or any other transfer of
19 ownership of 1 or more Michigan divisions or business units, or
20 generating stations or generating units, of an electric utility, to
21 either a third party or a utility subsidiary, the electric
22 utility's contract and agreements with the acquiring entity or
23 persons shall require all of the following for a period of at least
24 30 months:

25 (a) That the acquiring entity or persons hire a sufficient
26 number of nonsupervisory employees to safely and reliably operate
27 and maintain the station, division, or unit by making offers of

1 employment to the nonsupervisory workforce of the electric
2 utility's division, business unit, generating station, or
3 generating unit.

4 (b) That the acquiring entity or persons not employ
5 nonsupervisory employees from outside the electric utility's
6 workforce unless offers of employment have been made to all
7 qualified nonsupervisory employees of the acquired business unit or
8 facility.

9 (c) That the acquiring entity or persons have a dispute
10 resolution mechanism culminating in a final and binding decision by
11 a neutral third party for resolving employee complaints or disputes
12 over wages, fringe benefits, and working conditions.

13 (d) That the acquiring entity or persons offer employment at
14 no less than the wage rates and substantially equivalent fringe
15 benefits and terms and conditions of employment that are in effect
16 at the time of transfer of ownership of the division, business
17 unit, generating station, or generating unit. The wage rates and
18 substantially equivalent fringe benefits and terms and conditions
19 of employment shall continue for at least 30 months from the time
20 of the transfer of ownership unless the employees, or where
21 applicable collective bargaining representative, and the new
22 employer mutually agree to different terms and conditions of
23 employment within that 30-month period.

24 (4) The electric utility shall offer a transition plan to
25 those employees who are not offered jobs by the entity because the
26 entity has a need for fewer workers. If there is litigation
27 concerning the sale, or other transfer of ownership of the electric

1 utility's divisions, business units, generating stations, or
2 generating units, the 30-month period under subsection (3) begins
3 on the date the acquiring entity or persons take control or
4 management of the divisions, business units, generating stations,
5 or generating units of the electric utility.

6 (5) The commission shall adopt generally applicable service
7 quality and reliability standards for the transmission, generation,
8 and distribution systems of electric utilities and other entities
9 subject to its jurisdiction, including, but not limited to,
10 standards for service outages, distribution facility upgrades,
11 repairs and maintenance, telephone service, billing service,
12 operational reliability, and public and worker safety. In setting
13 service quality and reliability standards, the commission shall
14 consider safety, costs, local geography and weather, applicable
15 codes, national electric industry practices, sound engineering
16 judgment, and experience. The commission shall also include
17 provisions to upgrade the service quality of distribution circuits
18 that historically have experienced significantly below-average
19 performance in relationship to similar distribution circuits.

20 (6) Annually, each jurisdictional utility or entity shall file
21 its report with the commission detailing actions to be taken to
22 comply with the service quality and reliability standards during
23 the next calendar year and its performance in relation to the
24 service quality and reliability standards during the prior calendar
25 year. The annual reports shall contain that data as required by the
26 commission, including the estimated cost of achieving improvements
27 in the jurisdictional utility's or entity's performance with

1 respect to the service quality and reliability standards.

2 (7) The commission shall analyze the data to determine whether
3 the jurisdictional entities are properly operating and maintaining
4 their systems and take corrective action if needed.

5 ~~—— (8) The commission shall submit a report to the governor and
6 the legislature by September 1, 2009. In preparing the report, the
7 commission should review and consider relevant existing customer
8 surveys and examine what other states have done. This report shall
9 include all of the following:~~

10 ~~—— (a) An assessment of the major types of end use customer power
11 quality disturbances, including, but not limited to, voltage sags,
12 overvoltages, oscillatory transients, voltage swells, distortion,
13 power frequency variations, and interruptions, caused by both the
14 distribution and transmission systems within this state.~~

15 ~~—— (b) An assessment of utility power plant generating cost
16 efficiency, including, but not limited to, operational efficiency,
17 economic generating cost efficiency, and schedules for planned and
18 unplanned outages.~~

19 ~~—— (c) Current efforts employed by the commission to monitor or
20 enforce standards pertaining to end use customer power quality
21 disturbances and utility power plant generating cost efficiency
22 either through current practice, statute, policy, or rule.~~

23 ~~—— (d) Recommendations for use of common characteristics,
24 measures, and indices to monitor power quality disturbances and
25 power plant generating cost efficiency, such as expert customer
26 service assessments, frequency of disturbance occurrence, duration
27 of disturbance, and voltage magnitude.~~

1 ~~— (c) Recommendations for statutory changes that would be~~
2 ~~necessary to enable the commission to properly monitor and enforce~~
3 ~~standards to optimize power plant generating cost efficiency and~~
4 ~~minimize power quality disturbances. These recommendations shall~~
5 ~~include recommendations to provide methods to ensure that this~~
6 ~~state can obtain optimal and cost effective end use customer power~~
7 ~~quality to attract economic development and investment into the~~
8 ~~state.~~

9 (8) ~~(9)~~ By December 31, 2009, the commission shall ~~, based on~~
10 ~~its findings in subsection (8),~~ review its existing rules under
11 this section and amend the rules, if needed, under the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328, to implement performance standards for generation
14 facilities and for distribution facilities to protect end-use
15 customers from power quality disturbances.

16 (9) ~~(10)~~ Any standards or rules developed under this section
17 shall be designed to do the following, as applicable:

18 (a) Establish different requirements for each customer class,
19 whenever those different requirements are appropriate to carry out
20 the provisions of this section, and to reflect different load and
21 service characteristics of each customer class.

22 (b) Consider the availability and associated cost of necessary
23 equipment and labor required to maintain or upgrade distribution
24 and generating facilities.

25 (c) Ensure that the most cost-effective means of addressing
26 power quality disturbances are promoted for each utility, including
27 consideration of the installation of equipment or adoption of

1 operating practices at the end-user's location.

2 (d) Take into account the extent to which the benefits
3 associated with achieving a specified standard or improvement are
4 offset by the incremental capital, fuel, and operation and
5 maintenance expenses associated with meeting the specified standard
6 or improvement.

7 (e) Carefully consider the time frame for achieving a
8 specified standard, taking into account the time required to
9 implement needed investments or modify operating practices.

10 (10) ~~(11)~~—The commission shall also create benchmarks for
11 individual jurisdictional entities within their rate-making process
12 in order to accomplish the goals of this section to alleviate end-
13 use customer power quality disturbances and promote power plant
14 generating cost efficiency.

15 (11) ~~(12)~~—The commission shall establish a method for
16 gathering data from the industrial customer class to assist in
17 monitoring power quality and reliability standards related to
18 service characteristics of the industrial customer class.

19 (12) ~~(13)~~—The commission ~~is authorized to~~ **MAY** levy financial
20 incentives and penalties upon any jurisdictional entity which
21 exceeds or fails to meet the service quality and reliability
22 standards.

23 (13) ~~(14)~~—As used in this section, "jurisdictional utility" or
24 "jurisdictional entity" means jurisdictional regulated utility as
25 that term is defined in section 6q.

26 Sec. 10r. (1) The commission shall establish minimum standards
27 for the form and content of all disclosures, explanations, or sales

1 information disseminated by a person selling electric service to
2 ensure that the person provides adequate, accurate, and
3 understandable information about the service that enables a
4 customer to make an informed decision relating to the source and
5 type of electric service purchased. The standards shall be
6 developed to do all of the following:

7 (a) Not be unduly burdensome.

8 (b) Not unnecessarily delay or inhibit the initiation and
9 development of competition for electric generation service in any
10 market.

11 (c) Establish different requirements for disclosures,
12 explanations, or sales information relating to different services
13 or similar services to different classes of customers, whenever the
14 different requirements are appropriate to carry out the purposes of
15 this section.

16 (2) The commission shall require that ~~, starting January 1,~~
17 ~~2002,~~ all electric suppliers disclose in standardized, uniform
18 format on the customer's bill with a bill insert, on customer
19 contracts, or, for cooperatives, in periodicals issued by an
20 association of rural electric cooperatives, information about the
21 environmental characteristics of electricity products purchased by
22 the customer, including all of the following:

23 (a) The average fuel mix, including categories for oil, gas,
24 coal, solar, hydroelectric, wind, biofuel, nuclear, solid waste
25 incineration, biomass, and other fuel sources. If a source fits
26 into the other category, the specific source must be disclosed. A
27 regional average, determined by the commission, may be used only

1 for that portion of the electricity purchased by the customer for
2 which the fuel mix cannot be discerned. ~~For the purposes of AS USED~~
3 **IN** this subdivision, "biomass" means dedicated crops grown for
4 energy production and organic waste.

5 (b) The average emissions, in pounds per megawatt hour, sulfur
6 dioxide, carbon dioxide, and oxides of nitrogen. An emissions
7 default, determined by the commission, may be used if the regional
8 average fuel mix is being disclosed.

9 (c) The average of the high-level nuclear waste generated in
10 pounds per megawatt hour.

11 (d) The regional average fuel mix and emissions profile as
12 referenced in subdivisions (a), (b), and (c).

13 (3) The information required by subsection (2) shall be
14 provided no more than twice annually, and be based on a rolling
15 annual average. Emissions factors will be based on annual publicly
16 available data by generation source.

17 (4) All of the information required to be provided under
18 subsection (1) shall also be provided to the commission to be
19 included on the commission's internet site.

20 (5) The commission shall establish the Michigan renewables
21 energy program. The program shall be designed to inform customers
22 in this state of the availability and value of using renewable
23 energy generation and the potential of reduced pollution. The
24 program shall also be designed to promote the use of existing
25 renewable energy sources and encourage the development of new
26 facilities.

27 ~~(6) Within 2 years of the effective date of the amendatory act~~

1 ~~that added this subsection, the commission shall conduct a study~~
2 ~~and report to the governor and the house and senate standing~~
3 ~~committees with oversight of public utilities issues on the~~
4 ~~advisability of separating electric distribution and generation~~
5 ~~within electric utilities, taking into account the costs, benefits,~~
6 ~~efficiencies to be gained or lost, effects on customers, effects on~~
7 ~~reliability or quality of service, and other factors which the~~
8 ~~commission determines are appropriate. The report shall include,~~
9 ~~but is not limited to, the advisability of locating within separate~~
10 ~~departments of the utility the personnel responsible for the day-~~
11 ~~to-day management of electric distribution and generation and~~
12 ~~maintaining separate books and records for electric distribution~~
13 ~~and generation.~~

14 ~~—— (7) Two years after the effective date of the amendatory act~~
15 ~~that added this subsection, the commission shall conduct a study~~
16 ~~and report to the governor and the house and senate standing~~
17 ~~committees with oversight of public utilities issues on whether the~~
18 ~~state would benefit from the creation of a purchasing pool in which~~
19 ~~electric generation in this state is purchased and then resold. The~~
20 ~~report shall include, but is not limited to, whether the purchasing~~
21 ~~pool shall be a separate entity from electric utilities, the impact~~
22 ~~of such a pool on electric utilities' management of their~~
23 ~~electrical generating assets, and whether ratepayers would benefit~~
24 ~~from spreading the cost of new electric generation across all or a~~
25 ~~portion of this state.~~

26 (6) ~~(8) Within 270 days of the effective date of the~~
27 ~~amendatory act that added this subsection, **BY JULY 3, 2009**, each~~

1 electric utility regulated by the commission shall file with the
2 commission a plan for utilizing dispatchable customer-owned
3 distributed generation within the context of its integrated
4 resource planning process. Included in the utility's filing shall
5 be proposals for enrolling and compensating customers for the
6 utility's right to dispatch at-will the distributed generation
7 assets owned by those customers and provisions requiring the
8 customer to maintain these assets in a dispatchable condition. If
9 an electric utility already has programs addressing the subject of
10 the filing required under this subsection, the utility may refer to
11 and take credit for those existing programs in its proposed plan.

12 Sec. 10t. (1) An electric utility or alternative electric
13 supplier shall not shut off service to an eligible customer during
14 the heating season for nonpayment of a delinquent account if the
15 customer is an eligible senior citizen customer or if the customer
16 pays to the utility or supplier a monthly amount equal to 7% of the
17 estimated annual bill for the eligible customer and the eligible
18 customer demonstrates, within 14 days of requesting shutoff
19 protection, that he or she has applied for state or federal heating
20 assistance. If an arrearage exists at the time an eligible customer
21 applies for protection from shutoff of service during the heating
22 season, the utility or supplier shall permit the customer to pay
23 the arrearage in equal monthly installments between the date of
24 application and the start of the subsequent heating season.

25 (2) An electric utility or alternative electric supplier may
26 shut off service to **A CUSTOMER AS PROVIDED IN PART 7 OF THE CLEAN**
27 **AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1201 TO 460.1211, OR**

1 TO an eligible low-income customer who does not pay the monthly
2 amounts required under subsection (1) after giving notice in the
3 manner required by rules. The utility or supplier is not required
4 to offer a settlement agreement to an eligible low-income customer
5 who fails to make the monthly payments required under subsection
6 (1).

7 (3) If a customer fails to comply with the terms and
8 conditions of this section, an electric utility may shut off
9 service on its own behalf or on behalf of an alternative electric
10 supplier after giving the customer a notice, by personal service or
11 first-class mail, that contains all of the following information:

12 (a) That the customer has **NOT PAID THE PER-METER CHARGE UNDER**
13 **SECTION 207 OF THE CLEAN AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL**
14 **460.1207, OR THE CUSTOMER HAS** defaulted on the winter protection
15 plan.

16 (b) The nature of the default.

17 (c) That unless the customer makes the payments that are past
18 due within 10 days of the date of mailing, the utility or supplier
19 may shut off service.

20 (d) The date on or after which the utility or supplier may
21 shut off service, unless the customer takes appropriate action.

22 (e) That the customer has the right to file a complaint
23 disputing the claim of the utility or supplier before the date of
24 the proposed shutoff of service.

25 (f) That the customer has the right to request a hearing
26 before a hearing officer if the complaint cannot be otherwise
27 resolved and that the customer shall pay to the utility or supplier

1 that portion of the bill that is not in dispute within 3 days of
2 the date that the customer requests a hearing.

3 (g) That the customer has the right to represent himself or
4 herself, to be represented by an attorney, or to be assisted by any
5 other person of his or her choice in the complaint process.

6 (h) That the utility or supplier will not shut off service
7 pending the resolution of a complaint that is filed with the
8 utility in accordance with this section.

9 (i) The telephone number and address of the utility or
10 supplier where the customer may make inquiry, enter into a
11 settlement agreement, or file a complaint.

12 (j) That the customer should contact a social services agency
13 immediately if the customer believes he or she might be eligible
14 for emergency economic assistance.

15 (k) That the utility or supplier will postpone shutoff of
16 service if a medical emergency exists at the customer's residence.

17 (l) That the utility or supplier may require a deposit and
18 restoration charge if the supplier shuts off service for nonpayment
19 of a delinquent account.

20 (4) An electric utility is not required to shut off service
21 under this section to an eligible customer for nonpayment to an
22 alternative electric supplier.

23 (5) The commission shall establish an educational program to
24 ensure that eligible customers are informed of the requirements and
25 benefits of this section.

26 (6) As used in this section:

27 (a) "Eligible customer" means either an eligible low-income

1 customer or an eligible senior citizen customer.

2 (b) "Eligible low-income customer" means a customer whose
3 household income does not exceed 150% of the poverty level, as
4 published by the United States department of health and human
5 services, or who receives any of the following:

6 (i) Assistance from a state emergency relief program.

7 (ii) Food stamps.

8 (iii) Medicaid.

9 (c) "Eligible senior citizen customer" means a utility or
10 supplier customer who is 65 years of age or older and who advises
11 the utility of his or her eligibility.

12 Enacting section 1. Section 6e of 1939 PA 3, MCL 460.6e, is
13 repealed.

14 Enacting section 2. This amendatory act takes effect 90 days
15 after the date it is enacted into law.